

# Elastic Cloud Monthly Terms of Service

## NOT FOR EDITING

THESE ELASTIC CLOUD MONTHLY TERMS OF SERVICE (THE "**TERMS**") ARE PART OF A LEGAL CONTRACT BETWEEN THE ELASTIC ENTITY SET FORTH IN SECTION 12(H) ("**ELASTIC**", "**WE**" OR "**US**") AND PERSONS OR ENTITIES ("**YOU**") SEEKING TO ACCESS OR USE THE ELASTIC CLOUD SERVICE WITH WHICH THESE TERMS ARE PRESENTED (THE "**CLOUD SERVICE**").

THE TERMS, TOGETHER WITH ANY ADDITIONAL TERMS AND CONDITIONS AND/OR POLICIES REFERENCED AND INCORPORATED HEREIN, OR WHICH INCORPORATE THESE TERMS AND CONDITIONS, PROVIDE ALL OF THE TERMS AND CONDITIONS INCLUDED IN A LEGALLY BINDING CONTRACT BETWEEN YOU AND ELASTIC (THE "**AGREEMENT**"). THE AGREEMENT GOVERNS YOUR ACCESS AND USE OF THE CLOUD SERVICE WITH WHICH THESE TERMS ARE PRESENTED. IF YOU ACCESS OR USE A CLOUD SERVICE ON BEHALF OF AN ENTITY, YOU HEREBY REPRESENT AND WARRANT TO ELASTIC THAT YOU HAVE THE ACTUAL AUTHORITY TO BIND SUCH ENTITY TO THE AGREEMENT. ELASTIC RESERVES THE RIGHT TO CHANGE THE TERMS AND CONDITIONS OF THIS AGREEMENT BY POSTING MODIFIED TERMS AND CONDITIONS, ALONG WITH AN EFFECTIVE DATE FOR MODIFIED TERMS, PROVIDED THAT SUCH CHANGES WILL APPLY UPON THE START OF THE NEXT BILLING CYCLE. OTHERWISE, YOU AGREE THAT THE AGREEMENT BETWEEN YOU AND ELASTIC MAY ONLY BE MODIFIED BY A WRITTEN AMENDMENT SIGNED BY AN AUTHORIZED EXECUTIVE OF ELASTIC.

IF YOU DO NOT AGREE WITH ANY OF THE TERMS IN THE AGREEMENT, YOU MAY NOT ACCESS OR USE THE CLOUD SERVICE WITH WHICH THESE TERMS ARE PRESENTED. BY ACCESSING OR USING THE CLOUD SERVICE, YOU IRREVOCABLY AGREE TO ALL OF THE TERMS AND CONDITIONS OF THE AGREEMENT APPLICABLE TO SUCH ACTIVITY.

NOTWITHSTANDING THE FOREGOING, ANY AGREEMENT BETWEEN ELASTIC OR ONE OF ITS AFFILIATES AND YOU OR AN ENTITY ON WHOSE BEHALF YOU ARE ACTING, WHOSE TERMS ADDRESS THE SUBJECT MATTER COVERED BY THESE TERMS SHALL GOVERN THE PARTIES' OBLIGATIONS IN LIEU OF THESE TERMS.

**Effective Date: 1 February 2022**

### 1. Your Account

In order to use a Cloud Service, you must first register for one or more accounts (each, an "**Account**") for such Cloud Service. By creating the Account, you are responsible for maintaining the security of your Account (including, but not limited to, login credentials and the correct configuration of access control lists), and you are fully responsible for all activities that occur under your Account, and any other actions taken in connection with your Account. You agree to immediately notify Elastic of any unauthorized use of your Account, or any other breaches of security of which you become aware. Elastic will have no liability for any acts or omissions on your part, including any damages of any kind incurred as a result of such acts or omissions. You may not register multiple Accounts to simulate or act as a single Account or otherwise access a Cloud Service in a manner



intended to avoid incurring fees. Your Account will be your main point of contact for the Cloud Service. Any notifications (including notices, which shall be deemed delivered when sent) regarding a Cloud Service will be sent to the Cloud Service user interface or to the email address registered with your Account.

## 2. Subscription Levels and Trials

(a) These Terms apply to all Cloud Services when used on a month-to-month basis. The level of the Subscription (as defined below) that You purchase (the "**Subscription Level**") determines the features and functions You are entitled to use, and the specific Support Services that You are entitled to receive, if any, with respect to the Cloud Service. A description of the Subscription Levels and of the features and functions applicable to each Subscription Level is located at [https://www.elastic.co/cloud/as-a-service/cloud\\_services/subscriptions](https://www.elastic.co/cloud/as-a-service/cloud_services/subscriptions).

(b) These Terms also apply to trials (each, a "**Trial**") of Cloud Services, except for the following different or additional terms: (i) the Term for a Trial shall be for the period of time as determined by Elastic in its sole discretion, which may be extended upon Elastic's written consent; (ii) the Term for a Trial shall commence on the date that Elastic provides You with access to the Cloud Service that is the subject of the Trial; (iii) the features and functions You are entitled to use and the quantity of Resources (as defined below) You are allowed to consume during the Trial are determined at Elastic's sole discretion and may be changed at any time; (iv) the applicable Cloud Service may be used during the Trial for non-production, evaluation purposes only, unless otherwise agreed in writing by Elastic; (v) the Trial is provided "AS IS" without warranty of any kind, and Elastic disclaims all warranties, indemnities, and all other liabilities for Trials; (vi) You may be provided with support for the Trial at Elastic's discretion, subject to the terms available at <https://www.elastic.co/legal/support-terms-without-subscription>; and (vii) either party may terminate a Trial upon five (5) days' written notice to the other party.

## 3. Provision of Cloud Service and Support Services

Cloud Service(s) Generally. During the Term of this Agreement and, subject to your compliance with these Terms, Elastic will provide to You, and You hereby granted the right to use the Cloud Service (including the Software Agent, if applicable) at the applicable Subscription Level. Elastic may from time to time modify the features and functions that are eligible for Your use with respect to the Subscription Level You purchase. As used herein, "**Software Agent**" means the object code version of an Elastic-produced software agent that you may install on an endpoint to facilitate the ingestion of Content (as defined below) into a Cloud Service. For purposes of the Agreement and the applicable Subscription, the Software Agent shall be deemed part of the applicable Cloud Service. Certain libraries, components, utilities and other software (collectively, "**Components**") provided with, or as part of, the Software Agent are licensed under their own separate terms, not under this Agreement. The Components and their applicable terms (which do not restrict the rights granted under this Agreement) are currently identified at <https://www.elastic.co/third-party-dependencies>, or otherwise provided with the Software Agent or the Documentation (as defined below).

(b) Provision of Support Services. During the Term of this Agreement and, subject to your compliance with these Terms, Elastic will provide You with Support Services for the applicable Cloud Service at the applicable Subscription Level, as described at [https://www.elastic.co/legal/support\\_policy/cloud\\_services](https://www.elastic.co/legal/support_policy/cloud_services) (the applicable



support services policy, the "**Support Services Policy**").

(c) Support Services are subject to limitations described in the Support Services Policy and, except as expressly authorized by Elastic in writing, are provided to You solely for Your internal use. In addition, You agree not to:

- (i) use the Support Services to supply any consulting, support or training services regarding any Cloud Service to any third party; or
- (ii) use Support Services for one Subscription to obtain support for another Subscription with a lower Subscription Level, or to obtain support for any use of Elastic software that is offered as a service by any third party. You agree that any knowing failure to comply with the terms of this Section 3(c) will be deemed a material breach of this Agreement. In the event of any failure to comply this Section 3(c), Elastic may, without prejudice to any other remedies available hereunder, at law or in equity, suspend the provision of Support Services to You if You fail to cure such breach within fifteen (15) days after receipt of written notice thereof.

(d) This Agreement grants You a limited right to use the applicable Cloud Service as described herein and the limited right to receive the applicable Support Services as described herein for the Term ("**Subscription**"). Nothing in this Agreement shall be understood to transfer from Elastic to You any intellectual property rights, and all right, title and interest in and to any Cloud Service and the applicable Support Services will remain (as between the parties) solely with Elastic or its third-party suppliers. "Elastic" and Elastic Cloud logos, and all other trademarks, service marks, graphics and logos used in connection with any Cloud Service and the Support Services are trademarks or registered trademarks of Elastic or Elastic's third-party suppliers. Other trademarks, service marks, graphics and logos used in connection with any Cloud Service may be the trademarks of other third parties. Elastic grants to You no right or license to reproduce, or otherwise use any Elastic or third-party trademarks under this Agreement.

#### 4. Fees and Payment

- (a) With the exception of any free Trial, or where otherwise explicitly noted, You are required to pay a fee for the right to access and use a Cloud Service. You must pay for Your usage through one of the following methods of payment: (i) if You have purchased Your Subscription through a cloud service provider marketplace, billing of Your account with such cloud service provider ("**Marketplace Billing**"), (ii) payment of an applicable invoice You receive from Elastic for amounts owed, or (iii) payment using a valid credit card, which You must provide with a name and address to Elastic's payment processor. You are responsible for keeping Your payment details up to date. Your fees will be based on the resource metric ("**Resources**") by which the applicable Cloud Service is billed as identified on the applicable Cloud Service description, registration, or pricing page(s) that are presented or made available to You prior to purchase, or otherwise at the then-current list price for such Resources. You agree to pay for the Resources You use on a monthly basis in arrears. Except as otherwise expressly provided in this Agreement, any and all payments You make pursuant to this Agreement are non-refundable, and all commitments to make any payments hereunder are non-cancellable. Elastic reserves the right to require up-front payment for some features or functions of a Cloud Service. Payments will be made without right of set-off or chargeback.
- (b) All fees 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 any Subscription You purchase under this Agreement (collectively, "**Taxes**"). Taxes do not include any taxes on the net income of Elastic or any of its affiliates. Unless You qualify for a jurisdictional value added/sales/use/excise or similar tax exemption and provide Elastic with all necessary documentation Elastic may require (e.g., a valid exemption certificate or Direct Pay Permit), and provided that Elastic separately states any such taxes in the applicable invoice, You will pay and be solely responsible for all Taxes. If You are required by any foreign governmental authority to deduct or withhold any portion of the amount invoiced for the delivery or use of a Cloud Service or the Support Services under this Agreement, then (i) if Your transaction is directly with Elastic, You shall increase the sum paid to Elastic by an amount necessary for the total payment to Elastic equal to the amount originally invoiced or billed, and (ii) if Your transaction is conducted through a cloud service provider marketplace, You agree to remit a receipt of taxes withheld to Elastic within ninety (90) days of the remittance.

(c) Late payments will bear interest at the rate of 1% per month (or the highest rate permitted by law, if less). You are responsible for paying all reasonable expenses and attorneys' fees that Elastic incurs in connection with collecting unpaid amounts that are past due. Elastic reserves the right to terminate your right to access and use a Cloud Service for failure to timely pay amounts due. In order to dispute any amount billed to you for your use of a Cloud Service, you must do so within ten (10) days of being billed for such amounts, or you will be deemed to have waived your right to dispute such amounts.

(d) If you are paying by credit card, you will provide Elastic with valid credit card information. You authorize Elastic (and any credit card processors acting on its behalf) to charge all amounts owed to the credit card provided to Elastic and share any credit card and related billing and payment information with companies who work on Elastic's behalf, such as payment processors and/or credit agencies, solely for the purposes of checking credit, effecting payment to Elastic and servicing your Account. Elastic shall not be liable for any use or disclosure of such information by such third parties.

(e) Elastic may change its fees and payment policies at any time, provided that such changes will apply upon the start of the next billing cycle. Changes to the fees or payment policies will be communicated via the applicable Cloud Service and/or through any of our established communication channels.

## 5. Confidential Information

(a) 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 business, including but not limited to employee lists, product strategies, information security policies and procedures (and reports relating thereto), development activities, design and coding, and interfaces with a Cloud Service, and anything provided by Elastic in connection with the Support Services 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 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.

(b) The parties shall at all times, both during the term of this Agreement 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. Providers that host the Cloud Service in an applicable transaction may also receive, subject to a confidentiality obligation, information related to the terms of this Agreement or Customer's usage of the applicable Cloud Service.

(c) 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.

(d) 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.

## 6. Your Content

(a) In connection with Your use of a Cloud Service, You and/or Your end users may enable the ingestion of information, content and data to the Cloud Service, or may retrieve such information, content and data (collectively, "**Content**") from, such Cloud Service. You are fully responsible for the content, accuracy and completeness of such Content, and any loss, liabilities or damages resulting from the Content, regardless of the nature of the Content including, without limitation, whether the Content consists of, including but not limited to, data, text, graphics, audio, video, or computer software. You are solely responsible for backing up or otherwise making duplicates of Content. You represent and warrant to Elastic that: (i) You own or have



the necessary licenses to provide the Content to Elastic, and the provision of the Content to, and use of the Content by, Elastic as contemplated herein will not infringe the intellectual property rights, including but not limited to copyright, patent, trademark or trade secret rights, of any third party; and (ii) the Content does not contain any executable Malware (defined below). You are solely responsible for verifying that Your use of a Cloud Service complies with any requirements under applicable law or regulation governing access to or use of the Content.

(b) To the extent that You Communicate any Content relating to an identified or identifiable individual ("**Personal Data**") to Elastic, or Elastic obtains any Personal Data from You, Elastic agrees that it (and/or its contractors) will not knowingly collect, access, use, store, disclose, transfer or otherwise process (collectively, "**Process**" or "**Processing**") any such Personal Data except (i) for the purposes of this Agreement, including without limitation, to implement and deliver a Cloud Service and its features and associated services, provide customer support, and help You prevent or address service or technical problems; (ii) as expressly permitted by You in this Agreement or otherwise; or (iii) as compelled by law. Without limiting the foregoing, where applicable, Elastic's GDPR and CCPA data processing addendum ("**Elastic DPA**") set forth at <https://www.elastic.co/pdf/elastic-customer-dpa-v081521.0.pdf> shall govern such Processing. You shall make such disclosures, obtain such consents, provide such choices, implement such safeguards in compliance with, and otherwise comply with, any applicable law, rule or regulation regarding the Processing of Personal Data of any individual whose Personal Data Processed is by You (including, without limitation, by disclosing the Personal Data to Elastic) in connection with Your use of or access to a Cloud Service and its features and associated services.

(c) Elastic will implement reasonable and appropriate security measures for the applicable Cloud Service designed to protect Content against unauthorized access, modification, destruction or disclosure in accordance with the Elastic Security Standards, as that term is defined in the Elastic DPA. Elastic may modify the Elastic Security Standards from time to time, but will continue to provide at least the same level of security as is described in the Elastic Security Standards.

(d) By submitting Content to Elastic, You hereby grant Elastic a sublicensable, worldwide, royalty-free, and non-exclusive right to reproduce, modify, adapt and publish the Content solely for the purpose of enabling Elastic to provide You with the applicable Cloud Service and Support Services.

(e) You are solely responsible for deleting or retrieving Content from a Cloud Service prior to termination of the applicable Account for any reason. Once Your Subscription expires or terminates and You discontinue use of the applicable Cloud Service, Elastic will delete all of Your Content from the Cloud Service, using commercially reasonable efforts to do so within forty-five (45) days of such discontinuance, other than copies of Content (i) required to be retained by applicable law or (ii) stored in Elastic's backups and disaster recovery systems, which in each case shall be deleted in the ordinary course in accordance with Elastic's data retention policies.

(f) The applicable Cloud Service may provide Product Metadata (defined below) to Elastic. Product Metadata does not include Your personal data or any Content that You process or store in connection with Your use of the applicable Cloud Service. Elastic uses Product Metadata for security, support, product and operations management, and research and development. Elastic does not share Product Metadata with third parties. "**Product Metadata**" is statistical or other information about Your configuration and use of the applicable Cloud Service.





(g) Elastic reserves the right, but has no obligation, to monitor all of the content, data or information uploaded on any Cloud Service by third parties ("**Third Party Content**"), and is not responsible for any such content, data or information. Elastic does not represent or imply that that such Third-Party Content is accurate, useful or non-harmful. You must take all precautions necessary to protect Yourself and Your computer systems from viruses, worms, Trojan horses, and other harmful or destructive materials. Elastic disclaims any responsibility for any harm resulting from any Third-Party Content.

## 7. Restrictions

(a) You shall use each Cloud Service in compliance with all applicable laws, including export control and data privacy laws. You shall not: (i) execute or attempt to execute any computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, routines, files, scripts, agents or programs ("**Malware**") in any Cloud Service or use any Cloud Service to transmit Malware; (ii) use any Cloud Service to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene, or which violates the privacy or intellectual property rights of any third party; (iii) access or use any Cloud Service to compete against Elastic; (iv) access or use any Cloud Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; (v) except as expressly permitted herein, make access to any Cloud Service through Your account available to any third party; (vi) except as expressly authorized by Elastic in writing, sell, resell, rent, lease, offer any time sharing arrangement, service bureau or any service based upon, any Cloud Service; (vii) interfere with or disrupt the integrity, security or performance of any Cloud Service or third-party data contained therein; (viii) attempt to gain unauthorized access to any Cloud Service or any associated systems or networks; (ix) modify, make derivative works of, disassemble, decompile or reverse engineer any Cloud Service or any component thereof; (x) use the Cloud Service to process any protected health information as defined by the Health Insurance Portability and Accountability Act of 1996; (xi) use the Cloud Service to store or process any classified information (i.e., information given a security classification by a government body and protected against unauthorized disclosure under applicable law) or data subject to the International Traffic in Arms Regulations maintained by the U.S. Department of State; or (xii) use any Cloud Service in furtherance of the violation of the rights of others.

(b) If Elastic believes, in its sole discretion, that (i) You have not timely paid all fees due under this Agreement or (ii) You have violated or attempted to violate this Agreement, or that Your use of a Cloud Service presents a material security risk, Elastic may suspend access to such Cloud Service until the violation has been corrected. Elastic will use reasonable efforts to provide You with advance written notice prior to implementing such suspension and will work with You to resolve the underlying issue.

(c) If Your use of a Cloud Service materially degrades the performance of such Cloud Service for other customers, rate limiting controls may result in the temporary reduction or a pause in the responsiveness of a Cloud Service. You must contact Elastic if You desire to assess performance by benchmarking for more than five minutes.



## 8. Indemnification

You will, at Your expense (i) defend, or at Your option settle, but subject to Elastic's prior written consent, not to be unreasonably withheld, a claim brought against Elastic, its contractors, suppliers, licensors, and or respective directors, officers, employees and agents, arising out of or related to Your use of the Cloud Service or the applicable Support Services, including, without limitation, Your breach of Section 6 and/or Section 7 of this Agreement, and (ii) indemnify Elastic against and pay (1) any settlement of such claim or (2) any damages finally awarded to such third party by a court of competent jurisdiction as the result of such claim.

#### **9. Limited Warranty, Warranty Disclaimer**

(a) Elastic warrants that (i) during the Term of this Agreement it will perform applicable Support Services in a professional, workmanlike manner, consistent with generally accepted industry practice, and in substantial accordance with the Support Services Policy and (ii) the applicable Cloud Service will perform or in all material respects in accordance with the applicable end user documentation published at <https://www.elastic.co/guide/index.html> by Elastic ("Documentation"). In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Your exclusive remedy, shall be for Elastic to re-perform the applicable Support Services or correct any non-conformity in the Cloud Service, as applicable.

(b) EXCEPT AS SET FORTH IN SECTION 9(a), THE SUPPORT SERVICES AND THE APPLICABLE CLOUD SERVICE 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 SUPPORT SERVICES, ANY CLOUD SERVICE OR ANY MATERIALS FURNISHED OR PROVIDED TO YOU 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 SUPPORT SERVICES, THE CLOUD SERVICE(S) AND ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION WITH YOUR USE OF THE SUPPORT SERVICES OR APPLICABLE CLOUD SERVICE. YOU UNDERSTAND AND AGREES THAT THE SUPPORT SERVICES OR APPLICABLE CLOUD SERVICE AND ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

#### **10. Limitation of Liability**

(a) IN NO EVENT SHALL ELASTIC BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, 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 ELASTIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) EXCEPT WITH RESPECT TO A BREACH OF ITS OBLIGATIONS UNDER SECTION 5 (CONFIDENTIAL INFORMATION) IN NO EVENT SHALL ELASTIC'S TOTAL, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE LESSER OF (1) THE





AMOUNT PAID BY YOU TO ELASTIC UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY AND (2) US\$20,000.

(c) THE ALLOCATIONS OF LIABILITY IN THIS SECTION 10 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF ELASTIC FOR THE SUPPORT SERVICES AND CLOUD SERVICE(S) 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.

## 11. Term; Termination

(a) The term ("**Term**") of this Agreement will commence when You begin use of the applicable Cloud Service and until terminated in accordance with this Section 11.

(b) You may terminate this Agreement at any time by canceling your Account with, or deleting all of Your deployment(s) of, the Cloud Service. Termination of this Agreement shall not release you from any obligations undertaken by You under this Agreement, or from any obligations to pay Elastic for any outstanding fees. You will not receive any refunds by canceling your Account.

(c) Elastic may terminate your access to all or any part of a Cloud Service at any time, with or without cause, with or without notice, effective immediately. You agree that Elastic will not be liable to you or any third party for any such termination.

(d) Upon expiration or termination of this Agreement, (i) You shall have no further right to access or use the Cloud Service(s); and (ii) Your payment obligations as well as the provisions of Sections 5, 6(f), 9, 10, 11(b), 11(d), and 12 will survive such expiration or termination of this Agreement. Any outstanding fees shall become immediately due and payable upon expiration or termination of this Agreement for any reason and will be billed to You using the payment method You have provided.

## 12. General

(a) You may not assign this Agreement, in whole or in part, without the prior written consent of Elastic. Any assignment in violation of this Section 12 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. Nothing will restrict Elastic from subcontracting its obligations under this Agreement to any third parties.

(b) 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.

(c) You consent to Elastic's identification of You as a user of the Support Services and Cloud Service, on its website, through a press release issued by Elastic and in other promotional materials.

(d) You acknowledge that the Cloud Service(s) and 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. You are 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. You acknowledge that remote access to a Cloud Service may in certain circumstances be considered a re-export of such Cloud Service, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

(e) You acknowledge that You are aware of, understand and have 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**"). You agree that no one acting on Your 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 (i) to any governmental official or employee (including employees of government-owned and government-controlled corporations or agencies or public international organizations), (ii) to any political party, official of a political party, or candidate, (iii) to an intermediary for payment to any of the foregoing, or (iv) 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.

(f) 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.

(g) You understand and agree 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 generally available (i.e., 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 and services remains at Elastic's sole discretion. Accordingly, You agree that You are registering your Account and purchasing the Cloud Services based solely upon features and functions that are currently available as of the time you register the Account or use the Cloud Services, and not in expectation of any future feature or function.

(h) You are contracting with the Elastic entity listed in the table below based upon Your location. This Agreement shall be construed exclusively in accordance with the applicable governing law listed in the table below without regard to conflict of law rules. All suits will be brought in the corresponding court(s) listed in the table below, and each party consents to personal jurisdiction and venue therein. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The Uniform Computer Information Transactions Act (UCITA) does not apply to this Agreement regardless of when or where adopted. A breach or threatened breach, by either party of Section 5 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.

If You are in:	You are contracting with:	The governing law is:	The court(s) having exclusive jurisdiction are:
Australia	Elasticsearch Pty Ltd	State of New South Wales	New South Wales
France	Elastic International BV (EUR) or Elasticsearch BV (USD)	France	Paris
Germany	Elastic International BV (EUR) or Elasticsearch BV (USD)	Federal Republic of Germany	Munich, Germany
Hong Kong, China	Elasticsearch BV	Hong Kong	Arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre
Japan	Elasticsearch KK	Japan	Tokyo District Court
Korea	Elasticsearch BV	Republic of Korea	Seoul Central District Court



If You are in:	You are contracting with:	The governing law is:	The court(s) having exclusive jurisdiction are:
Singapore	Elasticsearch BV	Singapore	Arbitration in Singapore, with three arbitrators and in English, in accordance with the Arbitration Rules of the Singapore International Arbitration Centre
The Netherlands	Elastic International BV (EUR) or Elasticsearch BV (USD)	Netherlands	Amsterdam, The Netherlands
United Kingdom	Elasticsearch Limited	England & Wales. The provisions of the Contracts (Rights of Third Parties) of 1999 is hereby excluded	England & Wales
United States of America	Elasticsearch, Inc.	State of California, United States	Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court in Santa Clara County



<b>If You are in:</b>	<b>You are contracting with:</b>	<b>The governing law is:</b>	<b>The court(s) having exclusive jurisdiction are:</b>
United States of America - the Federal Government	Elasticsearch Federal Inc.	Applicable federal laws of the United States of America. To the extent permitted by federal law, the laws of the State of California (excluding California's choice of law rules) will apply in the absence of applicable federal law.	Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court in Santa Clara County
Another country not listed here	Elastic International BV (EUR) or Elasticsearch BV (USD)	Netherlands	Amsterdam, The Netherlands

Notwithstanding the foregoing, if You pay any portion of your Subscription fees using a credit card, Elasticsearch AS shall be the Elastic contracting entity to the Agreement, the Agreement shall be construed in accordance with Norwegian governing law, and all disputes shall be brought in the Norwegian court set forth above, regardless of where You are located.

The additional terms set forth in Attachment 1 apply to (i) customers outside the United States on a country-specific basis and (ii) U.S. Federal Government customers.

(i) 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 (i) if Elastic, at 800 W. El Camino Real, Suite 350, Mountain View, CA 94049 (Attn: Legal) or (ii) if You, at the mailing address listed on Your Account. 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 12(i).

(j) 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.



(k) 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.

(l) You, Your affiliates and Your respective employees, contractors or other agents may volunteer feedback to Elastic, and/or its affiliates, about the Cloud Service and/or Support Services ("**Feedback**"). Elastic and its affiliates shall be irrevocably entitled to use that Feedback, for any purpose and without any duty to account, provided that, in doing so, they may not breach their obligations of confidentiality under Section 5 of this Agreement.

(m) The parties are independent entities, and nothing herein shall be deemed to create a partnership, joint venture, agency, or employer/employee relationship.

(n) This Agreement, together with the Support Services Policy, which is incorporated herein by 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) this Agreement and (ii) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if You issue any purchase orders or similar documents in connection with Your use or purchase of a Cloud Service and/or Support Services, You shall do so only for Your own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into the Agreement, whether prior to or following receipt of Your 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.

## ATTACHMENT 1

### COUNTRY- AND U.S. FEDERAL GOVERNMENT-SPECIFIC PROVISIONS

#### 1 Australia

1.1 Section 4(b) of the Agreement is hereby deleted in its entirety and replaced with the following: All fees 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 any Subscription You purchase under this Agreement (collectively, "**Taxes**"). Taxes do not include any taxes on the net income of Elastic or any of its affiliates. You will pay and be solely responsible for all Taxes. If You are required by any foreign governmental authority to deduct or withhold any portion of the amount invoiced for the delivery or use of a Cloud Service or the Support Services under this Agreement, then (i) if Your transaction is directly with Elastic, You shall increase the sum paid to Elastic by an amount necessary for the total payment to Elastic equal to the amount originally invoiced or billed, and (ii) if Your transaction is conducted through a cloud service provider marketplace, You agree to remit a receipt of taxes withheld to Elastic within ninety (90) days of the remittance. If for any reason a





supply made by Elastic under or in connection with this agreement is a Taxable Supply for GST purposes, then at or before the time the consideration for the supply is payable, You must pay Elastic an amount equal to the GST for the supply (in addition to the consideration otherwise payable under this agreement for that supply), and Elastic must give You a Tax Invoice for the supply. For the purpose of this Section 4(b), GST means the goods and service tax under the Good and Services Tax Act 1999 (Cth) and capitalised terms have the meaning given in that Act.

1.2 The first sentence of Section 4(c) of the Agreement is hereby deleted in its entirety and replaced with the following: If You do not pay amounts owed when due, Elastic may charge interest on the unpaid balance at 2% per annum above the then-current overnight bank bill swap rate published by the Reserve Bank of Australia.

1.3 Section 9(b) of the Agreement is hereby deleted in its entirety and replaced with the following: Despite anything in this Agreement, Elastic's goods come with guarantees that cannot be excluded under the Australian Consumer Law (as set out in the Competition and Consumer Act 2010 (Cth) ("**ACCA**")) if You are deemed a 'Consumer' under ACCA. As a Consumer, You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Furthermore, You will also be entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

1.4 A new Section 9(c) is added to the Agreement as follows: NOTHING IN THIS AGREEMENT IS INTENDED TO LIMIT YOUR NON-EXCLUDABLE RIGHTS UNDER THE COMPETITION AND CONSUMER ACT 2010 (CTH). EXCEPT AS SET FORTH IN SECTION 9(a) ABOVE AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SUPPORT SERVICES AND THE APPLICABLE CLOUD SERVICE 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 SUPPORT SERVICES, ANY CLOUD SERVICE OR ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW AND EXCEPT AS SET FORTH IN SECTION 9(a) ABOVE, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SUPPORT SERVICES, THE CLOUD SERVICE(S) AND ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION WITH ITS USE OF THE SUPPORT SERVICES OR APPLICABLE CLOUD SERVICE. IN ADDITION, YOU UNDERSTAND AND AGREE THAT THE SUPPORT SERVICES AND APPLICABLE CLOUD SERVICE AND ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS. 1.5 A new Section 10(d) is added to the Agreement as follows: NOTHING IN THIS AGREEMENT SHALL OPERATE OR HAVE EFFECT SO AS TO LIMIT OR EXCLUDE THE LIABILITY OF A PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FOR FRAUD INCLUDING FRAUDULENT MISREPRESENTATION OR FOR ANY LIABILITY THAT MAY NOT BE LAWFULLY EXCLUDED UNDER APPLICABLE LAW. 1.6 A new Section 10(e) is added to the Agreement as follows: IF THE COMPETITION AND CONSUMER ACT 2010 (CTH) OR ANY OTHER LEGISLATION STATES THAT THERE IS A GUARANTEE IN RELATION TO ANY GOOD OR SERVICE SUPPLIED BY ELASTIC IN CONNECTION WITH THIS AGREEMENT, AND ELASTIC'S LIABILITY FOR FAILING TO



COMPLY WITH THAT GUARANTEE CANNOT BE EXCLUDED BUT MAY BE LIMITED, SECTIONS 10(a), 10(b) AND 10(c) DO NOT APPLY TO THAT LIABILITY. INSTEAD, ELASTIC'S LIABILITY FOR THAT FAILURE IS LIMITED TO (AT THE ELECTION OF ELASTIC), IN THE CASE OF A SUPPLY OF GOODS, ELASTIC REPLACING THE GOODS OR SUPPLYING EQUIVALENT GOODS OR REPAIRING THE GOODS, OR IN THE CASE OF A SUPPLY OF SERVICES, ELASTIC SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF HAVING THE SERVICES SUPPLIED AGAIN. 1.7 Section 12(b) of the Agreement is hereby deleted in its entirety.

## 2 France

2.1 The last sentence in Section 4(a) (relating to right of set-off and chargeback) of the Agreement is hereby deleted in its entirety.

2.2 Section 4(b) of the Agreement is hereby deleted in its entirety and replaced with the following: All fees are exclusive of any applicable value added taxes levied upon the delivery or use of the taxable components, if any, of any Subscription You purchase under this Agreement (collectively, "**Taxes**"). Unless You provide Elastic a valid excise tax exemption certificate and provided that Elastic separately states any such taxes in the applicable invoice, You will pay and be solely responsible for all Taxes. If You are required by any foreign governmental authority to deduct or withhold any portion of the amount invoiced for the delivery or use of a Cloud Service or the Support Services under this Agreement, then (i) if Your transaction is directly with Elastic, You shall increase the sum paid to Elastic by an amount necessary for the total payment to Elastic equal to the amount originally invoiced or billed, and (ii) if Your transaction is conducted through a cloud service provider marketplace, You agree to remit a receipt of taxes withheld to Elastic within ninety (90) days of the remittance.

2.3 The first sentence of Section 4(c) of the Agreement is hereby deleted in its entirety and replaced with the following: Amounts not paid when due shall bear interest from the date due to the date paid at three (3) times the French legal interest rate as at the date of billing or invoice, in addition to a fixed allowance of forty (40) euros for recovery costs.

2.4 A new Section 4(f) is hereby added to the Agreement as follows: General Obligations.

(i) You have had the opportunity to assess whether Elastic's off-the-shelf Cloud Service(s) and Support Services meet Your business needs including, by review, of the Documentation and Support Services Policy that have been made available by Elastic.

(ii) Elastic acknowledges that, in pre-contract discussions, if any, it was obliged to inform You about the capabilities of its off-the-shelf Cloud Service(s) and Support Services relative to Your expressed needs.

(iii) Subject to You communicating to Elastic accurate and up to date information about Your needs, Elastic shall (1) inform, advise and warn You in relation to Your use of the Cloud Service(s) and Support Services relative to those needs; and (2) suggest Elastic solutions that may be better suited to those needs where it is reasonably appropriate to do so (for example, volumes, IT architecture configurations and time constraints).

(iv) Each party shall comply with all laws applicable to its performance of the Agreement and cooperate with the other in good faith in such performance.

2.5 Section 9(a) of the Agreement is hereby deleted in its entirety and replaced with



the following: Elastic warrants that (i) during the Term of this Agreement it will perform applicable Support Services in a professional, workmanlike manner, consistent with generally accepted industry practice, and in substantial accordance with the Support Services Policy. In the event of a breach of the foregoing warranty, (1) Elastic shall have the right to re-perform the applicable Support Services or (2) if Elastic is unable to re-perform the non-compliant Support Services in accordance with the foregoing warranty, within thirty (30) days of receipt of notice of the applicable non-conformity, You may elect to terminate the associated Subscription, and Elastic will promptly refund to You any pre-paid, unused fees You have paid to Elastic for such Subscription, without prejudice to Your other rights and remedies under French law subject to the provisions of this Agreement; and (ii) during the Term of this Agreement the applicable Cloud Service will perform or in all material respects in accordance with the applicable end user documentation published at <https://www.elastic.co/guide/index.html> by Elastic ("**Documentation**"). In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Your exclusive remedy shall be for Elastic to (1) correct any failure(s) of the applicable Cloud Service to perform in all material respects in accordance with the Documentation or (2) if Elastic is unable to provide such a correction within thirty (30) days of receipt of notice of the applicable non-conformity, You may elect to terminate the associated Subscription, and Elastic will promptly refund to You any pre-paid, unused fees You have paid to Elastic for such Subscription, without prejudice to Your other rights and remedies under French law subject to the provisions of this Agreement.

2.6 Section 9(c) of the Agreement is hereby deleted in its entirety and replaced with the following: Except as set forth in Section 9(a) above, the Cloud Services and Support Services are provided "As Is" without warranty of any kind and Elastic makes no additional warranties, regarding or relating to the Cloud Services or Support Services or any materials furnished or provided to You under this Agreement. To the maximum extent permitted under applicable law, Elastic specifically disclaims all other warranties including fitness for a particular purpose and non-infringement with respect to the Cloud Services and Support Services and any materials furnished or provided to You under this Agreement. You agree that You are solely responsible for the results obtained in connection with Your use of the Cloud Services and Support Services. In addition, You understand and agree that the Cloud Services and Support Services and any materials furnished or provided to You under this Agreement are not designed or intended for use in the operation of nuclear facilities, aircraft, weapons systems or life support systems.

2.7 Section 10(a) of the Agreement is hereby deleted in its entirety and replaced with the following: Subject to Section 10(c) below and pursuant to Sections 1188 and 1231-3 of the French Civil Code, the parties agree that, except for a party's gross negligence ("**faute lourde**") or willful misconduct ("**dol**"), in no event shall You or Elastic, or Your or its 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 indirect damages of any kind in connection with or arising out of the performance of or failure re-perform this Agreement.

2.8 Section 10(b) of the Agreement is hereby deleted in its entirety and replaced with the following: Except with respect to (i) a breach of its obligations under Section 5, or (ii) its gross negligence ("**faute lourde**") or willful misconduct ("**dol**"), in no event shall Elastic's total and cumulative liability under this Agreement exceed the lesser of (1) the amount You have paid to Elastic under this Agreement in the twelve (12) months immediately prior to the first event giving rise to liability or (2)



US\$20,000.

2.9 Section 10(c) of the Agreement is hereby deleted in its entirety and replaced with the following: The allocations of liability in this Section 10 represent the agreed and bargained for understanding of the parties, and the compensation of Elastic for the Cloud Service(s) and Support Services provided hereunder reflects such allocations.

2.10 Section 12(b) of the Agreement is hereby deleted in its entirety.

2.11 The word "acknowledge" is replaced with "are informed" in Section 12(d) of the Agreement.

2.12 Section 12(f) of the Agreement is hereby deleted in its entirety and replaced with the following: Neither party will be liable for, or be considered to be in breach of, or in default under, this Agreement, as a result of any event of Force Majeure as defined under Article 1218 of the French Civil Code. You expressly agree that You shall not be relieved from Your payment obligations by any act of Force Majeure.

2.13 Section 12(l) of the Agreement is hereby deleted in its entirety and replaced with the following: Subject to its obligations under Section 5 of this Agreement (Confidential Information), Elastic will be irrevocably free to use without restriction of any kind for any purpose, all suggestions, ideas and/or feedback (collectively, "**Feedback**") provided to Elastic by You or Your affiliates and Your respective employees, contractors or other agents, with respect to a Cloud Service and/or the Support 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.

### 3 Germany

3.1 The first sentence of Section 4(c) of the Agreement is hereby deleted in its entirety and replaced with the following: If You do not pay amounts owed when due, Elastic may charge interest on the unpaid balance at a rate of nine (9) percentage points per year above the basic rate of interest of the Deutsche Bundesbank. In addition, Elastic is entitled to claim a lump sum of 40 Euros in accordance with § 288 para 5 BGB (German Civil Code).

3.2 A new Section 9(c) of the Agreement is added as follows: Your rights in case of defects are limited to a period of twelve (12) months and the period shall begin on the date the services are provided. Any claims for damages are subject to the limitations set forth under Section 10 of this Agreement.

3.3 Section 10 of the Agreement is hereby deleted in its entirety and replaced with the following: LIMITATION OF LIABILITY (a) Elastic shall be unrestricted liable for losses caused intentionally or with gross negligence and for death, personal injury or damage to health and for losses in accordance with the German Product Liability Act in the event of product liability as well as in all other cases where unlimited liability is mandatory pursuant to the applicable German Law. (b) Elastic shall be liable for losses caused by the breach of its primary obligations. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which the parties may rely. If Elastic breaches its primary obligations through simple negligence, then its liability shall be limited to the amount which was foreseeable by Elastic at the time the respective service was performed and typical for the Agreement. (c) Save for the stipulation in Sections (a) and (b), the following restrictions shall apply: (1) Elastic's total liability with respect to one order for direct damages (e.g. material damages including a resulting technical or reduced market value, repair cost, etc.) shall, as far as slight negligence is concerned, be limited for



any and all damages to the total fees You were required to pay Elastic under this Agreement in the twelve (12) months immediately prior to the event giving rise to liability. For the avoidance of doubt, this limitation of liability applies regardless of its legal cause (e.g. because of non-performance, impossibility of performance, warranty, delay, fault at conclusion of contract, breach of accessory obligation, rescission, tort). The parties agree that this limitation is fair in light of Your potential damages and the potential damages that can happen under the Agreement. (2) The liability for indirect damages (e.g. loss of use, loss of profit) is excluded.

3.4 Section 12(b) of the Agreement is hereby deleted in its entirety.

#### 4 Japan

4.1 Section 9(b) of the Agreement is hereby deleted in its entirety and replaced with the following: EXCEPT AS SET FORTH IN SECTION 9(a) ABOVE, THE SUPPORT SERVICES AND APPLICABLE CLOUD SERVICE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ELASTIC MAKES NO OTHER WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SUPPORT SERVICES, ANY CLOUD SERVICE OR ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO THE SUPPORT SERVICES OR THE CLOUD SERVICE(S). YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION YOUR USE OF THE SUPPORT SERVICES OR APPLICABLE CLOUD SERVICE. IN ADDITION, YOU UNDERSTAND AND AGREE THAT THE SUPPORT SERVICES AND APPLICABLE CLOUD SERVICE ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

4.2 Section 10(a) of the Agreement is hereby deleted in its entirety and replaced with the following: IN NO EVENT SHALL YOU OR ELASTIC, OR YOUR OR ITS 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, SPECIAL 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 WHERE SUCH DAMAGES ARISE THROUGH NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 5 United Kingdom

5.1 The first sentence of Section 4(c) of the Agreement is hereby deleted in its entirety and replaced with the following: If You do not pay amounts owed when due, Elastic may charge interest on the unpaid balance at a rate of four percent (4%) above the Bank of England Base lending rate prevailing from time to time.

5.2 Section 9(b) of the Agreement is hereby deleted in its entirety and replaced with the following: EXCEPT AS SET FORTH IN SECTION 9(a) ABOVE, THE SUPPORT SERVICES AND APPLICABLE CLOUD SERVICE 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 SUPPORT SERVICES, ANY CLOUD SERVICE OR ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL



IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SUPPORT SERVICES, THE CLOUD SERVICE(S) AND ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION WITH YOUR USE OF THE SUPPORT SERVICES OR APPLICABLE CLOUD SERVICE. IN ADDITION, YOU UNDERSTAND AND AGREE THAT THE SUPPORT SERVICES AND APPLICABLE CLOUD SERVICE AND ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

5.3 A new Section 10(d) is added to the Agreement as follows: NOTHING IN THIS AGREEMENT SHALL OPERATE OR HAVE EFFECT SO AS TO LIMIT OR EXCLUDE THE LIABILITY OF A PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FOR FRAUD INCLUDING FRAUDULENT MISREPRESENTATION OR FOR ANY LIABILITY THAT MAY NOT BE LAWFULLY EXCLUDED UNDER APPLICABLE LAW.

5.4 Section 12(b) of the Agreement is hereby deleted in its entirety.

## 6 United States Federal Government

6.1 The following sentences are hereby added to the end of the first paragraph of the preamble to the Agreement: "You" within these Terms shall mean the Agency itself and shall not apply to, nor bind (i) the individual(s) who utilize the Cloud Service on the Agency's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Agency. Elastic will look solely to the Agency to enforce any violation or breach of the Terms by such individuals, subject to federal law.

6.2 A new Section 6(h) is hereby added to the Agreement: Elastic will, in good faith, exercise due diligence using generally accepted commercial business practices for IT and cyber security in an effort to operate and maintain its systems in a secure manner, and to employ management, operational and technical controls in an effort to improve security of systems and data.

6.3 The following sentences are hereby added to the end of Section 7(a) of the Agreement: You shall use the Cloud Service solely in furtherance of the Agency's public purpose. You are responsible for ensuring that Your use of Elastic is compliant with applicable records management laws and regulations through the life and termination of Your use of the Cloud Service.

6.4 A new Section 10(d) is added to the Agreement as follows: The parties agree that nothing in this Section 10 or elsewhere in the Agreement in any way grants Elastic a waiver from, release of, or limitation of liability pertaining to, any past, current or future violation of federal law.

6.5 Section 11(b) of the Agreement is hereby deleted in its entirety and replaced with the following: Termination by You 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.

6.6 The following sentence is hereby added to Section 12(a) of the Agreement: 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).

6.7 Section 12(c) of the Agreement is hereby deleted and replaced in its entirety





with the following: Elastic agrees that Your name, seals, trademarks, logos, service marks and trade names ("**Agency Marks**"), and the fact that You use the Cloud Service, shall not be used by Elastic in such a manner as to state or imply (in the judgment of a reasonable person) that Elastic's products or services are endorsed, sponsored or recommended by You or by any other element of the Federal Government, or are considered by You or the Federal Government to be superior to any other products or services. Elastic agrees not to upload any Agency Marks on Elastic's website unless permission to do so has been granted by You or by other relevant federal government authority. Elastic may list Your name on the Elastic website or elsewhere so long as the name is not displayed in a more prominent fashion than that of any other third-party name.

6.8 Any provisions in the Agreement related to indemnification, attorneys' fees, filing deadlines, defense of lawsuits, collection expenses, and settlement are hereby waived. Liability of either party for any breach of the Agreement, as modified by this Section 11, or any claim arising from Agreement or this Section 11, or any claim, demand, suit or proceeding arising from the Agreement or this Section 11, shall be determined under the Federal Tort Claims Act or other governing federal authority. Federal Statute of Limitations provisions shall apply to any claim, demand, suit or proceeding arising from the Agreement or this Section 11.

#### **7 The Netherlands and any country not specifically listed in the table in Section 12(h) of the Agreement**

Section 10(a) of the Agreement is hereby deleted in its entirety and replaced with the following: IN NO EVENT SHALL YOU OR ELASTIC, OR YOUR OR ITS 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, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, HOWEVER, WITH THE EXCEPTION OF DAMAGES CAUSED BY GROSS NEGLIGENCE (BEWUSTE ROEKELOOSHEID) OR WILFUL MISCONDUCT (OPZET) OF YOU OR ELASTIC.

All previous versions of the Elastic Cloud Monthly Terms of Service can be found below.

Prior [terms](#) effective from 4 January 2022 through 31 January 2022.

Prior [terms](#) effective from 1 November 2021 through 3 January 2022.

Prior [terms](#) effective from 1 September 2021 through 31 October 2021.

Prior [terms](#) executed on 30 June 2021 through 31 August 2021.

Prior [terms](#) executed on 6 October 2020 through 29 June 2021.

Prior [terms](#) executed on 12 March 2020 through 5 October 2020.

Prior [terms](#) executed on 05 December 2019 through 11 March 2020.

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