Elastic Software End User License Agreement

EFFECTIVE DATE: JULY 17, 2020

READ THIS ELASTIC SOFTWARE END USER LICENSE AGREEMENT CAREFULLY, WHICH CONSTITUTES A LEGALLY BINDING AGREEMENT AND GOVERNS YOUR USE OF ELASTIC'S SOFTWARE (DEFINED BELOW). BY INSTALLING AND/OR USING SUCH SOFTWARE, YOU ARE INDICATING THAT YOU AGREE TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. IF YOU DO NOT AGREE WITH SUCH TERMS AND CONDITIONS, YOU MAY NOT INSTALL OR USE ANY OF THE SOFTWARE. IF YOU ARE INSTALLING OR USING THE SOFTWARE ON BEHALF OF YOUR EMPLOYER OR ANOTHER ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE ACTUAL AUTHORITY TO AGREE TO THE TERMS AND CONDITIONS ON BEHALF OF SUCH EMPLOYER OR OTHER ENTITY. YOU FURTHER AGREE THAT ELASTIC MAY DIRECTLY ENFORCE THIS AGREEMENT AGAINST YOU IN THE CASE OF YOUR BREACH OF THIS AGREEMENT, AND YOU WAIVE ANY OBJECTION REGARDING ELASTIC'S STANDING TO DO SO.

This **ELASTIC SOFTWARE END USER LICENSE AGREEMENT** (this "**Agreement**") is entered into by and between the applicable Elastic entity referenced in Section 5.4 ("**Elastic**") and the person, or entity on behalf of whom You are acting, as applicable ("**You**" or "**Customer**") that has downloaded any of Elastic's software to which this Agreement is attached or in connection with which this Agreement is presented to You via a URL link or otherwise (collectively, the "**Software**"). This Agreement is effective upon the commencement date of the License granted pursuant to Section 1.1 below (the "**Effective Date**").

1. **SOFTWARE LICENSES AND RESTRICTIONS**

    1.1 <u>License Grant</u>. Subject to the terms and conditions of this Agreement, Elastic agrees to grant, and does hereby grant to You during the applicable Subscription Term, and for the restricted scope of this Agreement, a License to the Eligible Features and Functions of the Software that are applicable to the Subscription Level that You have purchased, for the quantity stated in the Order Form and for

use solely with the specific Bundled Product for which You have purchased such Subscription.

1.2 <u>Reservation of Rights; Restrictions</u>. As between Elastic and You, Elastic owns all right title and interest in and to the Software and any derivative works thereof, and except as expressly set forth in Section 1.1 of this Agreement, no other license to the Software is granted to You by implication, estoppel or otherwise. You agree not to: (i) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software that Elastic has not made available in human-readable form or any portion thereof to human-readable form, except and only to the minimum extent permitted by applicable law, (ii) prepare derivative works from, modify, copy or use the Software in any manner except as expressly permitted herein; (iii) except as expressly permitted in Section 1.1 of this Agreement, transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software in whole or in part to any third party; (iv) except for Your internal business purposes, or as otherwise may be expressly permitted by the Subscription Agreement, use the Software for providing any time-sharing services, software-as-a-service or "SaaS" offering, service bureau services or as part of an application services provider or other service offering; (v) circumvent the limitations on use of the Software that are imposed or preserved by any License Key, (vi) alter or remove any marks and notices in the Software; or (vii) make available to any third party (other than Contractors) any analysis of the results of operation of the Software, including benchmarking results, without the prior written consent of Elastic. You acknowledge that any access to Elastic-Hosted Infrastructure is provided solely for the purpose of facilitating updates to the threat detection capabilities of endpoint security. You agree not to access the Elastic-Hosted Infrastructure for any other reason including, without limitation, to (a) monitor the availability or performance of such Elastic-Hosted Infrastructure or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; or (b) interfere with or disrupt the integrity or performance of any Elastic-Hosted infrastructure.

1.3 <u>Third Party Open Source</u>. The Software may contain or be provided with third party open source libraries, components, utilities and other open source software (collectively, "**Third Party Open Source Software**"), which Third Party Open Source Software may have applicable license terms as identified on a website designated by Elastic (currently, **https://www.elastic.co/third-party-dependencies**) or otherwise provided with the Software or Documentation. Notwithstanding anything to the contrary herein, use of the Third Party Open Source Software shall be subject to the license terms and conditions applicable to such Third Party Open Source Software, to the extent required by the applicable

licensor (which terms shall not restrict the license rights granted to You hereunder, but may contain additional rights).

1.4 Audit Rights. You agree that Elastic and Business Partner shall each have the right, unless waived in writing by the respective party and upon fifteen (15) days' notice to You, to audit Your use of the Software for compliance with any limitations on Your use of the Software that are set forth herein. You agree to provide the auditing party with the necessary access to the Software to conduct such an audit either (i) remotely, or (ii) if remote performance is not possible, at Your facilities, during normal business hours and no more than one (1) time in any twelve (12) month period. In the event any such audit reveals that You have used the Software in excess of the applicable quantitative limitations, You agree to promptly pay Business Partner an amount equal to the difference between the fees actually paid and the fees that You should have paid to remain in compliance with such quantitative limitations. This Section 1.4 shall survive for a period of two (2) years from the termination or expiration of this Agreement.

1.5 Reporting Excess Use. You agree to promptly notify Business Partner (with a copy to Elastic) in writing if You use a Subscription in excess of the quantity for which You have purchased such Subscription. You shall include in such notice the amount of excess use and the date on which such excess use began. Business Partner will invoice You for such excess use, adjusted on a pro rata basis from the date of first use and for the remainder of the applicable Subscription Term.

1.6 Product Usage Data. The Software may provide Product Usage Data (defined below) to Elastic. Product Usage Data does not include any of Your personal data or any content that You process or store in the Software in connection with Your use of the Software. Product Usage Data is processed in accordance with Elastic's Product Privacy Statement at **https://www.elastic.co/legal/product-privacy-statement**. Elastic uses Product Usage Data for security, support, product and operations management, and research and development. Elastic does not share Product Usage Data with third parties. "**Product Usage Data**" is statistical and other information about Your configuration and use of the Software, such as type and version, operating systems and environment, cluster statistics (e.g., node type and counts), performance (e.g., uptime and response times) and feature usage.

2. TERM AND TERMINATION

2.1 Term. Unless earlier terminated under Section 2.2 below, this Agreement shall commence on the Effective Date, and shall continue in force for the Subscription Term.

2.2 Termination. Either party may, upon written notice to the other party, terminate

this Agreement for material breach by the other party automatically and without any other formality, if such party has failed to cure such material breach within thirty (30) days of receiving written notice of such material breach from the non-breaching party. Notwithstanding the foregoing, this Agreement shall automatically terminate in the event that You intentionally breach the scope of the license granted in Section 1.1 of this Agreement, provided that Elastic reserves the right to retroactively waive such automatic termination upon written notice to You.

2.3 Post Termination or Expiration. Upon termination or expiration of this Agreement, for any reason, You shall promptly cease the use of the Software and Documentation and destroy (and certify to Elastic in writing the fact of such destruction), or return to Elastic, all copies of the Software and Documentation then in Your possession or under Your control.

2.4 Survival. The first sentence of Section 1.2, and Sections 2.3, 2.4, 3.3, 4, 5 and 6 (as any such Sections may be modified by Attachment 1, if applicable) shall survive any termination or expiration of this Agreement.

3. LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

3.1 Limited Performance Warranty. Elastic warrants that during the applicable Subscription Term, the Software will perform in all material respects in accordance with the Documentation. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Your exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Software to perform in all material respects in accordance with the Documentation or (ii) if Elastic is unable to provide such a correction within thirty (30) days of receipt of notice of the applicable non-conformity, You may elect to terminate this Agreement. The warranty set forth in this Section 3.1 does not apply to the extent a non-conformity results from the applicable Software or any portion thereof: (a) being altered, except by or on behalf Elastic; (b) not being used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the Documentation; (c) being subjected to misuse, negligence, or accident; or (d) being used on equipment, products, or systems not meeting specifications identified by Elastic in the Documentation. Additionally, the warranties set forth herein only apply when notice of a warranty claim is provided to Elastic during the applicable Subscription Term, and do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Elastic.

3.2 Malicious Code. Elastic warrants that at the time the Software is made available for download, it will be free of Malicious Code.

3.3 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 3,

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ELASTIC AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE OR DOCUMENTATION. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, AND WITH RESPECT TO THE USE OF THE FOREGOING. FURTHER, ELASTIC DOES NOT WARRANT RESULTS OF USE OR THAT THE SOFTWARE WILL BE ERROR FREE OR THAT THE USE OF THE SOFTWARE WILL BE UNINTERRUPTED. YOU UNDERSTAND AND AGREE THAT THE SOFTWARE AND DOCUMENTATION 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.

4. LIMITATION OF LIABILITY

4.1 Disclaimer of Certain Damages. IN NO EVENT SHALL YOU OR ELASTIC OR ITS LICENSORS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, OR THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF THE RESPONSIBLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 4.1 SHALL NOT APPLY TO A BREACH THROUGH GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT BY YOU OF THE SCOPE OF THE LICENSE GRANTED IN SECTION 1.1 OR TO ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

4.2 Damages Cap. IN NO EVENT SHALL ELASTIC'S OR ITS LICENSORS' AGGREGATE, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED ONE THOUSAND U.S. DOLLARS (US$1,000).

4.3 YOU AGREE THAT THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE A REASONABLE ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

5. GENERAL

5.1 <u>Business Partners</u>. Payment terms and taxes will be as separately agreed between You and Business Partner in the Subscription Agreement. Elastic is not responsible and shall not be liable for (i) the actions or omissions of Business Partner, (ii) any additional obligations not set out in this Agreement and which Business Partner may have agreed to provide to You, and/or (iii) any products or services that Business Partner supplies to You under any separate agreements between the Business Partner and You, including the Bundled Product and any related support under the Subscription Agreement.

5.2 <u>Export Control</u>. You acknowledge that the Software 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 the Software may in certain circumstances be considered a re-export of such Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations. You represent that You are not sanctioned or prohibited by the U.S. government or any other public authority from entering into this Agreement or receiving the Software or related technology on any basis including, but not limited to: (i) appearance on the List of Specially Designated Nationals and Blocked Persons or the Consolidated Sanctions List administered by the U.S. Department of the Treasury's Office of Foreign Assets Control, or the Denied Persons List, Entity List or Unverified List administered by the Commerce Department's Bureau of Industry and Security; (ii) being owned or controlled, directly or indirectly, by any one or more person covered by foregoing clause (i); or (iii) acting on behalf of any person covered by foregoing clause (i) or (ii).

5.3 <u>Assignment</u>. 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 5.3 shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective successors and assigns. Nothing will restrict Elastic from subcontracting its obligations under this Agreement to any third parties.

5.4 <u>Contracting Entity</u>. 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.

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
Canada	Elasticsearch B.C. Ltd	Canada	Province of Ontario
France	Elasticsearch SARL	France	Paris
Germany	Elasticsearch GmbH	Federal Republic of Germany	Munich, Germany
Hong Kong, China	Elasticsearch HK Ltd	Hong Kong	Arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre

If You are in:	You are contracting with:	The governing law is:	The court(s) having exclusive jurisdiction are:
Japan	Elasticsearch KK	Japan	Tokyo District Court
Korea	Elasticsearch Korea Ltd	Republic of Korea	Seoul Central District Court
Norway	Elasticsearch AS	Norway	Oslo District Court
Singapore	Elasticsearch Pte Ltd	Singapore	Arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre
Spain	Elasticsearch, S.L.U.	Spain	City of Madrid
Sweden	Elasticsearch AB	Sweden	Stockholm District Court
Switzerland	Elasticsearch (CH) AG	Switzerland	Zurich, Switzerland
The Netherlands	Elasticsearch BV	Netherlands	Amsterdam, The Netherlands

If You are in:	You are contracting with:	The governing law is:	The court(s) having exclusive jurisdiction are:
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
United States of America - the Federal Government	Elasticsearch Federal Inc. or Endgame Systems, LLC	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	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

If You are in:	You are contracting with:	The governing law is:	The court(s) having exclusive jurisdiction are:
		absence of applicable federal law.	
Another country not listed here	Elasticsearch BV	Netherlands	Amsterdam, The Netherlands

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.

5.5 <u>Future Features and Functions</u>. 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 purchasing a Subscription based solely upon features and functions of the Software that are currently available as of the Effective Date, and not in expectation of any future feature or function.

5.6 <u>Attorneys' fees</u>. 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.

5.7 <u>Miscellaneous</u>. This Agreement, including Attachment 1 hereto, which is hereby incorporated herein by this reference, completely and exclusively states the entire agreement of the parties regarding the subject matter herein, and it supersedes,

and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if You issue any purchase order or similar document in connection with the purchase of a Subscription (whether to Elastic or to a Business Partner) and/or obtaining of License to the Software, You will do so only for Your internal, administrative purposes and not with the intent to provide any contractual terms. This Agreement may not be modified except by a subsequently dated, written amendment that expressly amends this Agreement and which is signed on behalf of Elastic and You, by duly authorized representatives. If any provision hereof is held unenforceable, this Agreement will continue without said provision and be interpreted to reflect the original intent of the parties.

6. DEFINITIONS

The following terms have the meanings ascribed:

6.1 "**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.

6.2 "**Bundled Product**" means the computer hardware and/or software products of a Business Partner for which Elastic has authorized the Business Partner to bundle and distribute the Software and to sell Subscriptions, in each case, as part of and for use with such computer hardware and/or software products.

6.3 "**Business Partner**" means an organization authorized by Elastic, directly or indirectly, to sell Subscriptions solely as part of and solely for use in a Bundled Product.

6.4 "**Contractor**" means any third party contractor performing services on Your behalf.

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

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

6.7 "**Eligible Features and Functions**" means those features and functions of the Software that are eligible for use with respect to the Subscription Level You

purchase. A list of Eligible Features and Functions that correspond to each version of Software may be found at **https://www.elastic.co/subscriptions**. Elastic may from time to time modify the Eligible Features and Functions of the Subscription Level(s) of the Software during the Subscription Term, but shall not materially reduce the functionality thereof.

6.8 "**License**" means a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) solely for Your internal business operations to (i) install and use, in object code format, the Software solely as part of and solely for use in the Bundled Product, (ii) use, and distribute internally a reasonable number of copies of the Documentation, provided that You must include on such copies all marks and notices; (iii) permit Your Contractors and Affiliates to use the applicable Software and Documentation as set forth in (i) and (ii) above, provided that such use by Contractors and Affiliates must be solely for Your benefit, and You shall be responsible for all acts and omissions of such Contractors and Affiliates in connection with their use of the Software that are contrary to the terms and conditions of this Agreement.

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

6.10 "**Malicious Code**" means any code that is designed to harm, or otherwise disrupt in any unauthorized manner, the operation of Your computer programs or computer systems or destroy or damage data. For clarity, Malicious Code shall not include any software bugs or errors, or any standard features of functions of the Software and/or any License Key that are intended to enforce the temporal and/or other limitations on the scope of the use of the Software to the scope of the License granted to You.

6.11 "**Order Form**" means the ordering document pursuant to which You purchased Your Subscription and agreed to the terms and conditions of the Subscription Agreement.

6.12 "**Subscription**" means Your right to receive a License to the Software solely as part of and solely for use in the Bundled Product.

6.13 "**Subscription Agreement**" means a legally enforceable agreement between You and a Business Partner, under which You purchase a Subscription.

6.14 "**Subscription Level**" means the level of Subscription You have purchased for the Software included in the Bundled Product. The Subscription Level You have purchased determines the specific Eligible Features and functions that You are entitled to use.

6.15 "**Subscription Term**" means the period of time for which You have purchased a Subscription, including any renewals.

ATTACHMENT 1

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

1 AUSTRALIA

1.1 <u>A new sentence is added at the beginning of Section 3.3 to the Agreement as follows</u>: NOTHING IN THIS AGREEMENT IS INTENDED TO LIMIT YOUR NON-EXCLUDABLE RIGHTS UNDER THE COMPETITION AND CONSUMER ACT 2010 (CTH).

1.2 <u>A new Section 3.4 is added to the Agreement as follows</u>: 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 entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

1.3 <u>A new Section 4.4 is added to the Agreement as follows</u>: 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.

1.4 <u>A new Section 4.5 is added to the Agreement as follows</u>: Australian Consumer Law. IF THE COMPETITION AND CONSUMER ACT 2010 (CTH) OR ANY OTHER LEGISLATION STATES THAT THERE IS A GUARANTEE IN RELATION TO ANY GOOD OR SERVICE SUPPLIED BY ELASTIC IN CONNECTION WITH THIS AGREEMENT, AND ELASTIC'S LIABILITY FOR FAILING TO COMPLY WITH THAT GUARANTEE CANNOT BE EXCLUDED BUT MAY BE LIMITED, SECTIONS 4.1, 4.2 AND 4.3 DO NOT APPLY TO THAT LIABILITY. INSTEAD, ELASTIC'S LIABILITY FOR THAT FAILURE IS LIMITED TO (AT THE ELECTION OF ELASTIC), IN THE CASE OF A SUPPLY OF GOODS, ELASTIC REPLACING THE GOODS OR SUPPLYING EQUIVALENT GOODS OR REPAIRING THE GOODS, OR IN THE CASE OF A SUPPLY OF SERVICES, ELASTIC SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

1.5 <u>Section 5.6 (Attorneys' Fees) to the Agreement is hereby deleted in its entirety</u>.

2 FRANCE

2.1 <u>A new Section 1.6 is hereby added to the Agreement as follows: General Obligations</u>.

> (a) You had the opportunity to assess whether Elastic's off-the-shelf Software meet Your business needs including, by review, of the Documentation that have been made available by Elastic.

> (b) Elastic acknowledges that, in pre-contract discussions, if any, it was obliged to inform You about the capabilities of its off-the-shelf Software relative to Your expressed needs.

> (c) Subject to You communicating to Elastic accurate and up to date information about Your needs, Elastic shall (i) inform, advise and warn You in relation to Your use of the Software relative to those needs; and (ii) suggest Elastic solutions that may be better suited to those needs where it is reasonably appropriate to do so (for example, volumes, IT architecture configurations and time constraints).

> (d) 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.

2.2 <u>The second sentence of Section 3.1 of the Agreement is hereby deleted in its entirety and replaced with the following</u>: In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Your exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Software to perform in all material respects in accordance with the Documentation or (ii) if Elastic is unable to provide such a correction within thirty (30) days of receipt of notice of the applicable non-conformity, You may elect to terminate this Agreement, without prejudice to Your other rights and remedies under French law subject to the provisions of this Agreement.

2.3 <u>Section 4.1 of the Agreement is hereby deleted in its entirety and replaced with the following</u>: Excluded liability. Subject to Section 4.3 below and pursuant to Sections 1188 and 1231-3 of the French Civil Code, the parties agree that, except for a party's gross negligence ("**faute lorde**") or 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.

2.4 <u>Section 4.2 of the Agreement is hereby deleted in its entirety and replaced with the following</u>: Except with respect to its gross negligence ("**faute lorde**") or willful misconduct ("**dol**"), in no event shall Elastic's total and cumulative liability

under this Agreement exceed US$1,000.

2.5 <u>Section 4.3 of the Agreement is hereby deleted in its entirety and replaced with the following</u>: Basis of the Bargain. The allocations of liability in this Section 4 represent the agreed and bargained for understanding of the parties, and the compensation of Elastic for the Software provided hereunder reflects such allocations.

2.6 <u>The first sentence of Section 2.2 of the Agreement is hereby deleted in its entirety and replaced with the following</u>: Each party may terminate this Agreement, ipso jure and without having to file a claim, upon giving notice in writing to the other party if the non-terminating party breaches Sections 1.1, 1.2, 1.4, 1.5, 5.2, or 5.3 or otherwise commits a material breach of this Agreement with respect to the Subscription and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so.

2.7 <u>The word "acknowledge" is replaced with "are informed" in Section 5.2 of the Agreement</u>.

2.8 <u>Section 5.6 (Attorneys' Fees) to the Agreement is hereby deleted in its entirety</u>.

3 GERMANY

3.1 <u>The fourth sentence of Section 3.1 of the Agreement is hereby deleted in its entirety and replaced with the following</u>: Additionally, the warranties set forth herein do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Elastic.

3.2 <u>Section 3.3 of the Agreement is hereby deleted in its entirety and replaced with the following</u>: Warranty Disclaimer. You shall not be entitled to claim or commence proceedings for a breach of the warranties given under Section 3.1 or 3.2 above unless: (i) You notify Elastic in writing about the breach within fourteen (14) days of first becoming aware of such breach: and (ii) any proceedings commenced within twelve (12) months after such breach was first notified by You to Elastic in accordance with Section 3.1 (whereas subsection ii of Section 3.1 is considered to be a limitation period) or 3.2, as applicable.

3.3 <u>Section 4 of the Agreement is hereby deleted in its entirety and replaced with the following</u>:

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

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

4.3 Save for the stipulation in Sections 4.1 and 4.2, the following restrictions shall apply:

(a) Elastic's total liability for simple negligence under Section 4.2 for typical and foreseeable losses shall be limited for any and all damages to the maximum of US$1,000. 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.

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

4.4 Except as expressly set out in Sections 4.1, 4.2 and 4.3, Elastic's liability shall be excluded.

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

4.6 Without prejudice to (a) Your rights under § 812 BGB (German Civil Code) and (b) Section 4 of this Agreement, Your rights under § 536 BGB (German Civil Code) are hereby excluded.

3.4 <u>Section 5.6 (Attorneys' Fees) to the Agreement is hereby deleted in its entirety</u>.

4 JAPAN

4.1 <u>The second sentence of Section 3.3 of the Agreement is hereby deleted in its entirety and replaced with the following</u>: TO THE MAXIMUM EXTENT PERMITTED

UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION.

5 NORWAY

5.1 <u>Section 4.2 of the Agreement is deleted in its entirety and replaced with the following</u>: Damages Cap. EXCEPT WITH RESPECT TO (I) YOUR VIOLATIONS OF THE USE RESTRICTIONS SET FORTH IN THIS AGREEMENT, AND (II) A PARTY'S WILLFUL MISCONDUCT (NO: FORSETT, SE: UPPSÅT) OR GROSS NEGLIGENCE (NO: GROV UAKTSOMHET, SE: GROV OAKTSAMHET), IN NO EVENT SHALL EITHER PARTY'S TOTAL, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED US$1,000. DIRECT DAMAGE IS EXCLUSIVELY UNDERSTOOD AS REASONABLE EXPENSES WHICH THE NON-BREACHING PARTY WOULD HAVE TO INCUR TO MAKE THE BREACHING PARTY'S PERFORMANCE CONFORM TO THE AGREEMENT; REASONABLE EXPENSES INCURRED TO DETERMINE THE CAUSE AND SCOPE OF THE DAMAGE, INSOFAR AS THE DETERMINATION RELATES TO DIRECT DAMAGE AS HEREIN DEFINED AND REASONABLE EXPENSES INCURRED TO PREVENT OR MITIGATE DAMAGE, INSOFAR AS THE NON-BREACHING PARTY DEMONSTRATES THAT THESE EXPENSES RESULTED IN MITIGATION OF DIRECT DAMAGE AS HEREIN DEFINED.

6 SPAIN

6.1 <u>Section 4.3 of the Agreement is hereby deleted in its entirety and replaced with the following</u>: <u>Basis of the Bargain</u>. The allocations of liability in this Section represent the agreed and bargained for understanding of the parties, and the compensation of Elastic for the Software provided hereunder reflects such allocations.

6.2 <u>A new Section 4.4 is added as follows</u>: <u>Exclusion of Limitation of Liability</u>. 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 WILFUL MISCONDUCT ("**dolo**") or FOR INTENT AND GROSS NEGLIGENCE ("**culpa lata**") OR FOR ANY LIABILITY THAT MAY NOT BE LAWFULLY EXCLUDED UNDER APPLICABLE LAW.

7 SWEDEN

7.1 <u>Section 4.2 of the Agreement is deleted in its entirety and replaced with the following</u>: Damages Cap. EXCEPT WITH RESPECT TO (I) YOUR VIOLATIONS OF THE USE RESTRICTIONS SET FORTH IN THIS AGREEMENT, AND (II) A PARTY'S

WILLFUL MISCONDUCT (NO: FORSETT, SE: UPPSÅT) OR GROSS NEGLIGENCE (NO: GROV UAKTSOMHET, SE: GROV OAKTSAMHET), IN NO EVENT SHALL EITHER PARTY'S TOTAL, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED US$1,000. DIRECT DAMAGE IS EXCLUSIVELY UNDERSTOOD AS REASONABLE EXPENSES WHICH THE NON-BREACHING PARTY WOULD HAVE TO INCUR TO MAKE THE BREACHING PARTY'S PERFORMANCE CONFORM TO THE AGREEMENT; REASONABLE EXPENSES INCURRED TO DETERMINE THE CAUSE AND SCOPE OF THE DAMAGE, INSOFAR AS THE DETERMINATION RELATES TO DIRECT DAMAGE AS HEREIN DEFINED AND REASONABLE EXPENSES INCURRED TO PREVENT OR MITIGATE DAMAGE, INSOFAR AS THE NON-BREACHING PARTY DEMONSTRATES THAT THESE EXPENSES RESULTED IN MITIGATION OF DIRECT DAMAGE AS HEREIN DEFINED.

8 SWITZERLAND

8.1 The words "TO THE EXTENT PERMITTED BY LAW," are added to the beginning of the first sentence in Section 4.2 of the Agreement.

9 UNITED KINGDOM

9.1 The words "SATISFACTORY QUALITY," are added after "MERCHANTABILITY," in Section 3.3 of the Agreement.

9.2 The words "TO THE EXTENT PERMITTED BY LAW," are added to the beginning of the first sentence in Section 4.2 of the Agreement.

9.3 A new Section 4.4 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.

9.4 Section 5.6 (Attorneys' Fees) to the Agreement is hereby deleted in its entirety.

9.5 A new Section 5.8 is added as follows: Third-party Beneficiaries. The parties intend that no term of the contract made by this Agreement may be enforced by any person who is not a party to it. The parties reserve the right to agree to rescind or vary this Agreement without the consent of any other person. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall be and hereby are excluded.

10 UNITED STATES FEDERAL GOVERNMENT

10.1 <u>The following sentences are hereby added to the end of the first paragraph of the preamble to the Agreement</u>: "You" within this Agreement shall mean the Agency itself and shall not apply to, nor bind (i) the individual(s) who use the Software 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 Agreement by such individuals, subject to federal law.

10.2 <u>The following sentences are hereby added to the end of Section 1.2 of the Agreement</u>: You shall use the Software 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 Software.

10.3 <u>A new Section 1.6 is hereby added to the Agreement</u>: 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.

10.4 <u>A new Section 1.7 is hereby added to the Agreement</u>: Government Rights. The Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("**FAR**") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("**DOD**"), the U.S. Government acquires the Software and/or the Documentation, the same shall be subject to this Agreement, as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("**DFARS**") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Software under this Agreement and in any subcontract under which the Software and Documentation are acquired or licensed.

10.5 <u>Section 2.2 of the Agreement is hereby deleted in its entirety and replaced</u>

with the following: Termination shall be governed by Federal Acquisition Regulation ("**FAR**") clause 52.212-4(I) and (m), and the Contract Disputes Act, 41 U.S.C. §§ 601-613.

10.6 A new Section 4.4 is added to the Agreement as follows: The parties agree that nothing in this Section 4 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.

10.7 The following sentence is hereby added to Section 5.3 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).

10.8 Section 5.6 (Attorneys' Fees) to the Agreement is hereby deleted in its entirety.

10.9 Liability of either party for any breach of the Agreement, as modified by this Section 10, or any claim arising from Agreement or this Section 10, or any claim, demand, suit or proceeding arising from the Agreement or this Section 11, shall be determined under the Contracts Disputes 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 10.

11 THE NETHERLANDS AND ANY COUNTRY NOT SPECIFICALLY LISTED IN THE TABLE IN SECTION 5.4 OF THE AGREEMENT

11.1 The following is added after the word "DAMAGES" at the end of Section 4.2 of the Agreement: HOWEVER, WITH THE EXCEPTION OF DAMAGES CAUSED BY GROSS NEGLIGENCE (BEWUSTE ROEKELOOSHEID) OR WILFUL MISCONDUCT (OPZET) BY YOU OR ELASTIC.

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