



ELASTIC

SERVICES AGREEMENT

NOT FOR EDITING OR NEGOTIATION.

Effective Date: NOVEMBER 5, 2023

This **Elastic Services Agreement**, including all attachments, any Addendum (as defined below), schedules and exhibits, and documents at referenced URLs, all of which are incorporated herein by this reference (collectively, this "**Agreement**"), is entered into by and between the Elastic entity ("**Elastic**"), and the entity identified as the "Customer" ("**Customer**") each as set forth on the signature block of the Elastic order form executed by Elastic and Customer ("**Order Form**"), as of the date specified in such Order Form ("**Effective Date**").

1 DEFINITIONS

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

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

1.2 "**Affiliate**" means, with respect to a party, any entity that controls, is controlled by, or which is under common control with, such party, where "control" means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity, or the contractual right to establish policy for, and manage the operations of, the entity.

1.3 "**Configuration and Implementation**" or "**C&I Services**" means services to configure and implement a Product that are provided to Customer by or on behalf of Elastic under an Order Form.

1.4 "**Customer Information**" means Customer data (if any) provided by Customer to Elastic in connection with the delivery of C&I Services.

1.5 "**Elastic DPA**" means Elastic's GDPR and CCPA data processing addendum set forth at [Elastic Data Processing Addendum - v100623.0](#)

1.6 "**Elastic Security Standards**" mean Elastic's security standards for the processing of Customer Information as set forth in the Elastic DPA.

1.7 "**Infringement Claim**" means a claim brought against Customer by an unaffiliated third party alleging that Customer's use in accordance with this Agreement and each applicable Addendum hereto during the applicable Subscription Term of the Services infringed such party's intellectual property rights.

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

1.9 "**Reseller**" means a third party authorized by Elastic to promote and resell Services.

1.10 "**Services**" means C&I and/or Training Services.

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

2 AGREEMENT SCOPE

2.1 Services Orders. Orders for Services may be placed by Customer through the execution of Order Forms with Elastic. Each executed Order Form is incorporated by reference into, and shall be governed by the terms and conditions of, this Agreement.

2.2 Services Purchased Through Resellers. The parties agree that Customer may purchase through Resellers Services that are governed by this Agreement. Orders for Services purchased through a Reseller are not subject to cancellation by Customer. Where Customer purchases Services through a Reseller, the Reseller will enter into an Order Form with Elastic for the purchase of Services that references this Agreement and shows Customer as the "ship to" party and Reseller as the "bill to" party, and Reseller and Customer will enter into a separate agreement setting forth the fees to be paid by Customer to Reseller for

such Services, as well as any other terms or conditions that apply between them. Elastic hereby agrees that, subject to receiving payment from the Reseller, it shall be responsible to Customer, pursuant to the terms and conditions of this Agreement, for providing the Services under any such Order Form. Customer hereby acknowledges that Elastic will not be responsible for the obligations of any Reseller to Customer under such separate agreement, for the acts or omissions of Reseller, or for any third party products or services furnished to Customer by any Reseller. For the avoidance of doubt, Sections 3.1 and 3.2 below will be of no effect where Customer purchases Services through a Reseller, as payment and taxes will be addressed in the agreement between Reseller and Customer.

2.3 C&I Services and Training Orders

2.3.1 **Services Period**. Customer agrees that it must consume the Services within the Services Period. The "**Service Period**" means the period commencing and expiring on the respective start and end dates set forth on the Order Form for the applicable Service.

2.3.2 **Costs and Expenses**. Elastic shall be responsible for any costs and expenses (including travel, equipment, meals and incidentals, or other related out of pocket expenses) incurred by Elastic and incidental to the performance of Services under this Agreement unless such costs and expenses are set forth in an applicable Order Form or otherwise agreed to in writing by the parties.

2.3.3 **Non-transferable**. Services are non-transferable and only for Customer's internal use, and Customer may not use the Services to supply any services, including configuration, implementation, technical, support or training services, to any third party.

2.3.4 **Commercial Items**. All Services are Commercial Items as that term is defined in the Federal Acquisition Regulation (FAR) at 48 C.F.R. 2.101.

2.3.5 **Personnel**. Elastic reserves the right, at its discretion, to assign personnel, and to use and assign personnel from Elastic Affiliates, to perform Services. Notwithstanding any provision to the contrary in this Agreement, Elastic reserves the right to use subcontractors to perform Services on Elastic's behalf. Each member of Elastic's C&I Services or Training Services staff is a "**Consultant**".

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

2.3.7 **General Participant and Customer Obligations**. Customer shall ensure that all Participants and other persons booked to receive Services do not share access to the C&I Services Materials

or the Training Materials with any third party for any reason. Consultants shall have the right in their reasonable discretion to exclude from any Training Services any person in breach of this Section 2.3.7.

2.3.8 Participant and Customer Obligations for C&I Services.

For C&I Services, Customer agrees to provide the Consultant with such cooperation, Customer Information, access and support reasonably required to allow Elastic to successfully provide the C&I Services, and as may be set forth in the C&I Services Description (defined below). Customer understands and agrees that Elastic's obligations hereunder are expressly conditioned upon Customer providing such cooperation, Customer Information, access and support. To the extent that Customer makes available secure access to Customer's systems, Customer shall ensure such access complies with any data privacy laws applicable to Customer and Customer's security policies. Elastic shall not be responsible for any services or items that are not expressly included in the C&I Services Description, which shall be the responsibility of Customer. The "C&I Services Description" means the document located at https://www.elastic.co/services_policy that describes the specific details of the scope of each specific package of C&I Services available for purchase by Customer from Elastic.

2.3.9 Participant and Customer Obligations for Training Services.

To obtain access to Training Materials and participate in Training Services, each single, named individual designated by Customer to participate in the Training Services ("**Participant**") (i) shall be required to register for an individual user account at <https://cloud.elastic.co/registration> ("**Participant Account**") and (ii) may be required to set up a laboratory environment. Customer and/or Participant shall be responsible for installing and configuring components to set up the laboratory environment. Each Participant shall be responsible for complying with the terms of use applicable to their respective Participant Account and for maintaining the security of the log-in credential for their Participant Account. Customer and/or the Participant shall immediately notify Elastic of any unauthorized use of a Participant Account, or any other breaches of security of which Customer or Participant becomes aware.

2.3.10 Monitor Rights. Elastic shall have the right to verify Participant's right to access or use Training Services and monitor Participant's progress and access to and use of the Training Services for compliance with any applicable limitations on Customer's and/or Participant's use thereof. In the event any such monitoring reveals that Customer or Participant has used the Training Services in excess of the limitations set forth in this Agreement or an Order Form, Customer shall promptly pay to Elastic an amount equal to the difference between the fees actually paid and the fees that Customer should have paid to remain in compliance with such limitations. Without prejudice to Elastic's other rights, Elastic may in its sole discretion disable any Participant Account credentials revealed in such self-audit to have been shared.

2.3.11 Customer Information. Customer hereby grants Elastic a limited right to use any Customer Information provided to Elastic in connection with C&I Services solely for the purpose of providing C&I Services to Customer. Customer will retain any of its rights (including all intellectual property rights) in and to the Customer Information. Customer Information comprising Confidential Information will be subject to Section 4 of this Agreement.

2.3.12 C&I Services Materials.

a) The C&I Services that Elastic performs, and any materials or other deliverables that are provided to Customer as part of the C&I Services, and any materials, technology, know-how and other innovations of any kind that Elastic or its Consultants may create in the course of performing the C&I Services, including without limitation all improvements and modifications to Elastic's technology, and all intellectual property rights therein ("**C&I Services Materials**"), are generally applicable to Elastic's business and do not constitute custom work product. Elastic shall own all right, title and interest in and to all C&I Services Materials, including all intellectual property rights therein and thereto. For the avoidance of doubt, Elastic's use of C&I Services Materials created for Customer are subject to Customer's ownership interest in Customer Information and Elastic's ongoing obligations and restrictions with respect to Confidential Information, which will not under any circumstances be deemed to constitute C&I Services Materials. Elastic will not identify Customer in any way in connection with Elastic's future use of such C&I Services Materials.

b) Customer is hereby granted a license to access and use the C&I Services Materials in connection with Customer's applicable Subscription on the terms, and for the same period of time as, Customer's applicable Subscription.

c) Customer may allow its third party service providers to exercise the foregoing rights on Customer's behalf. Customer may not distribute or otherwise transfer such C&I Services Material to any third party, unless Customer is permitted to do so under the license applicable to the Subscription. Nothing in this Agreement shall be deemed to prohibit Elastic from using for any purpose any general knowledge, skills, techniques or methods it learns in the course of performing C&I Services.

2.3.13 Training Materials.

a) In connection with Elastic's provision of Training Services, Elastic may make available to Customer other materials, including, without limitation, training course, exam, and other educational materials ("**Training Materials**"). Subject to the restrictions in this Section, Customer is hereby granted a license to access, download, internally use and display such Training Materials as necessary to utilize the Training Services purchased by Customer. Except as expressly set forth in this Section, Elastic hereby strictly reserves all other rights to any materials provided by Elastic, including Training Materials.

b) Customer shall not (i) copy (electronically or otherwise) the Training Materials, except for purposes of internal distribution within Customer's organization and for archival purposes, (ii) modify or translate the Training Materials, (iii) re-distribute or disclose Training Materials to third parties (other than Customer Affiliates and Contractors providing services to Customer that do not compete with the Services), or (iv) lend, hire out, make available to the public, sell, offer for sale, share, or transfer the Training Materials in any other way. Customer will not remove, alter or destroy any proprietary, trademark or copyright notices placed upon or contained within any materials provided by Elastic.

3 PAYMENT AND TAXES

3.1 Payment. Elastic will invoice Customer for the fees due under each Order Form or otherwise under this Agreement, and Customer will pay such fees within thirty (30) days after receipt of an applicable invoice. All invoices will be paid in the currency set forth on the applicable Order Form. Payments will be made without right of set-off or chargeback. Except as otherwise expressly provided in this Agreement, any and all payments made by Customer pursuant to this Agreement or any Order Form are non-refundable, and all commitments to make any payments hereunder or under any Order Form are non-cancellable.

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

4 CONFIDENTIAL INFORMATION

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

technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made. Confidential Information also includes any notes, summaries, analyses of the foregoing that are prepared by the receiving party.

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

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

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

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

5 WARRANTIES AND DISCLAIMER OF WARRANTIES

5.1 Limited Services Performance Warranty. Elastic warrants that it will perform the Services, as applicable, in a professional, workmanlike manner, consistent with generally accepted industry practice. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy, shall be for Elastic to re-perform the applicable Services at no additional cost to Customer.

5.2 Reserved.

5.3 Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTIONS 5.1 ABOVE OR IN AN APPLICABLE ADDENDUM, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND ELASTIC MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE SERVICES OR ANY MATERIALS

FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT.

5.4 High-Risk Activities Prohibition. CUSTOMER SHALL NOT USE THE SERVICES OR ANY MATERIALS PROVIDED UNDER THIS AGREEMENT IN HIGH-RISK ACTIVITIES, WHERE THEIR USE OR FAILURE COULD REASONABLY BE EXPECTED TO LEAD TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL OR PROPERTY DAMAGE (SUCH AS THE CREATION OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, AUTONOMOUS VEHICLES, WEAPON SYSTEMS, OR LIFE SUPPORT SYSTEMS).

6 INFRINGEMENT CLAIMS

6.1 Elastic Obligations. Elastic will, at its expense, defend or settle any Infringement Claim and will indemnify Customer against and pay (i) any settlement of such Infringement Claim consented to by Elastic or (ii) any damages finally awarded by a court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim. Elastic shall not enter into any settlement agreement with respect to an Infringement Claim if such settlement agreement requires any admission of liability or wrongdoing on the part of Customer or imposes on Customer any obligation other than the obligation to cease using the Services that are subject to the Infringement Claim, unless Customer has first consented in writing to the applicable terms of such settlement agreement that are in conflict with the foregoing limitations.

6.2 Exclusions. Elastic will have no obligation to Customer to the extent any Infringement Claim or resulting award is based upon or results from: (i) the failure of Customer to use, within thirty (30) days of Customer's receipt of notice from Elastic regarding the availability of such update and that such update addresses an infringement issue, an update to such Services that would have avoided the Infringement Claim; (ii) a modification of the Services that is not performed by or on behalf of Elastic; (iii) the combination, operation, or use of the Services with any other products, services or equipment not provided by Elastic or branded as Elastic products or services, where there would be no Infringement Claim but for such combination; or (iv) use of the Services other than in accordance with the terms and conditions of this Agreement.

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

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

6.5 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 6 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH

RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY ANY SERVICES.

7 LIMITATION OF LIABILITY

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

7.2 Damages Cap. EXCEPT WITH RESPECT TO (I) A PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 4 (EXCLUDING BREACHES RELATING TO CUSTOMER INFORMATION, WHICH ARE SUBJECT TO SECTION 7.3 BELOW), (II) ELASTIC'S OBLIGATIONS UNDER SECTION 6, (III) AMOUNTS PAYABLE BY CUSTOMER UNDER SECTION 3 OF THIS AGREEMENT AND EACH ORDER FORM, AND (IV) CUSTOMER'S VIOLATIONS OF THE USE RESTRICTIONS SET FORTH IN THIS AGREEMENT OR ANY ADDENDUM, IN NO EVENT SHALL ELASTIC'S OR CUSTOMER'S TOTAL, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO ELASTIC UNDER THIS AGREEMENT FOR THE AFFECTED SERVICES DELIVERED AND/OR MADE AVAILABLE TO CUSTOMER UNDER SUCH ORDER FORM FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY.

7.3 Damages for Breaches of Customer Information. IN NO EVENT SHALL ELASTIC'S TOTAL, CUMULATIVE LIABILITY FOR A BREACH OF CUSTOMER INFORMATION ARISING FROM A SECURITY BREACH, AS DEFINED IN THE ELASTIC SECURITY STANDARDS, TO THE EXTENT SUCH SECURITY BREACH RESULTS FROM ELASTIC'S BREACH OF THE ELASTIC DPA, UNDER ANY ORDER FORM EXCEED THREE TIMES (3X) THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO ELASTIC UNDER THIS AGREEMENT FOR THE AFFECTED SERVICES DELIVERED AND/OR MADE AVAILABLE TO CUSTOMER UNDER SUCH ORDER FORM FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY.

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

8 TERM AND TERMINATION

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

8.2 Termination. Services. Each party may terminate a Services, and all associated Order Forms, upon giving notice in writing to the other party if the non-terminating party commits a material breach of this Agreement with respect to such Services and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. Upon the termination or expiration of this Agreement, the rights and obligations of the parties with respect thereto will, subject to Section 8.3 below, cease, provided that termination of the Services under this subsection (a) will not result in termination of any other Services.

8.3 Survival. Upon the expiration or termination of an Order Form or this Agreement, (i) Customer shall have no further rights under any affected Subscription(s); and (ii) any payment obligations accrued under Section 3, as well as the provisions of Sections 1, 4, 5, 6, 7, 8.3 and 9 of this Agreement will survive such expiration or termination.

9 GENERAL

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

9.2 Assignment. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, provided that no such consent will be required to assign this Agreement in its entirety to (i) an Affiliate that is able to satisfy the obligations of the assigning party under this Agreement or (ii) a successor in interest in connection with a merger, acquisition or sale of all or substantially all of the assigning party's assets. Any assignment in violation of this Section shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective permitted successors and assigns.

9.3 Attorneys' Fees. If any action or proceeding, whether regulatory, administrative, at law or in equity is commenced or instituted to enforce or interpret any of the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs of suit and expenses, in addition to any other relief to which such prevailing party may be entitled. As used herein, "prevailing party" includes without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

9.4 California Consumer Privacy Act (CCPA). Elastic is a "Service Provider" as such term is defined under §1798.140(v) of the CCPA. As such Elastic shall not retain, use or disclose any personal information (as defined in the CCPA) received from Customer during the Term of this Agreement for any purpose other than the specific purpose of providing the Services specified in this Agreement or for such other business purpose as is specified in this Agreement.

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

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

9.7 Feedback. Customer, Customer's Affiliates, and their respective agents, may volunteer feedback to Elastic, and/or its Affiliates, about the 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 4 of this Agreement.

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

9.9 Future Features and Functions. Customer understands and agrees that any features or functions of products referenced on any Elastic website, or in any presentations, press releases or public statements, which are not currently available or not currently available as a GA release, may not be delivered on time or at all. The development, release, and timing of any features or functionality described for Elastic's products remains at Elastic's sole discretion. Accordingly, Customer agrees that it is purchasing products based solely upon features and functions that are currently available as of the time an Order Form is executed, and not in expectation of any future feature or function.

9.10 Governing Law, Jurisdiction and Venue.

Applicable governing law, jurisdiction and venue will be as set forth in Attachment 1 to this Agreement.

9.11 Malicious Files Disclaimer. To facilitate Customer's evaluation of certain Elastic security products, Elastic may provide Customer with samples of malicious files or code or similar data. These samples will only be provided to Customer with Customer's permission and with notice regarding the contents of such files. Elastic disclaims any warranty, responsibility or liability associated with such materials, including any damage to Customer's data or devices.

9.12 Non-waiver. Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.

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

9.14 Reserved.

9.15 Relationship of the Parties. The relationship of the parties hereunder shall be that of independent contractors, and nothing herein shall be deemed or construed to create any employment, agency or fiduciary relationship between the parties. Each party shall be solely responsible for the supervision, direction, control and payment of its personnel, including, without limitation, for taxes, deductions and withholdings, compensation and benefits, and nothing herein will be deemed to result in either party having an employer-employee relationship with the personnel of the other party.

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

9.17 Entire Agreement; Amendment. This Agreement, together with any Order Forms executed by the parties each of which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) an applicable Order Form (but only for the transaction thereunder), and (ii) an applicable Addendum (including any exhibits, attachments and addenda thereto), (iii) Attachment 1 (Country-Specific Provisions), and (iv) this Agreement. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Customer issues any purchase orders or similar documents in connection with its purchase of Services, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into this Agreement, whether prior to or following receipt of Customer's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (a) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (b) an amendment of this Agreement, nor (c) an agreement to amend this Agreement. This Agreement shall not be modified except by a subsequently dated, written amendment that expressly amends this Agreement and which is signed on behalf of Elastic and Customer by their duly authorized representatives. The parties agree that the terms and conditions of this Agreement are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement. Any ambiguity shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language.

ATTACHMENT 1
COUNTRY-SPECIFIC PROVISION

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| <p>1. AUSTRALIA</p> <p>1.1 <u>The third and fourth sentences of Section 3.2 of the Agreement are hereby deleted in their entirety and replaced with the following:</u> Customer will pay and be solely responsible for all Taxes. If Customer is required by any foreign governmental authority to deduct or withhold any portion of the amount invoiced for the delivery or use of Services under this Agreement, Customer shall increase the sum paid to Elastic by an amount necessary for the total payment to Elastic equal to the amount originally invoiced. 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, Customer 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 Customer a Tax Invoice for the supply. For the purpose of this Section 3.2, 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.</p> <p>1.2 <u>A new sentence is added at the beginning of Section 5.3 to the Agreement as follows:</u> NOTHING IN THIS AGREEMENT IS INTENDED TO LIMIT CUSTOMER'S NON-EXCLUDABLE RIGHTS UNDER THE COMPETITION AND CONSUMER ACT 2010 (CTH).</p> <p>1.3 <u>A new Section 5.4 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 Customer is deemed a 'Consumer' under ACCA. Then Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Furthermore, Customer 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.</p> <p>1.4 <u>A new Section 7.5 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.</p> <p>1.5 <u>A new Section 7.6 is added to the Agreement as follows:</u> <u>Australian Consumer Law.</u> 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 7.1, 7.2, 7.3 AND 7.4 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.</p> | <p>1.6 Section 9.3 (<u>Attorneys' Fees</u>) of the Agreement is hereby deleted in its entirety.</p> <p>1.7 <u>Governing Law and Jurisdiction.</u> This Agreement will be governed by and construed in accordance with the laws of the New South Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. A breach or threatened breach, by either party of Section 4 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.</p> <p>2. CANADA</p> <p>2.1 <u>Governing Law and Jurisdiction.</u> This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of laws principles, and the parties agree to the exclusive jurisdiction of the courts of the Province of Ontario. The parties acknowledge that this Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable court set forth above, based upon any alleged lack of personal jurisdiction, improper venue, <i>forum non conveniens</i>, or any similar claim or defense. The parties further acknowledge that a breach, or threatened breach, by either party of Section 4 may cause irreparable harm for which the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.</p> <p>2.2 <u>A new section 9.18 is hereby added to the Agreement as follows:</u> <u>Language.</u> Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern. At the request of the parties, the official language of this Agreement and all communications and documents relating hereto is the English language, and the English-language version shall govern all interpretation of the Agreement. <i>A lademande des parties, lan langue officielle de la presente convention ainsi que toutes communications et tous documents sy rapportant est la langue anglaise, et la version anglaise est celle que regit toute interpretation de la presente convention.</i></p> <p>3. FRANCE</p> <p>3.1 <u>A new Section 2.5 is hereby added to the Agreement as follows:</u> <u>General Obligations.</u></p> <p>2.5.1 Customer has had the opportunity to assess whether Elastic's off-the-shelf Services meet its business needs including, by review, of other Services descriptions that have been made available by Elastic.</p> <p>2.5.2 Elastic acknowledges that, in pre-contract discussions, if any, it was obliged to inform the Customer about the capabilities of its off-the-shelf Services relative to the Customer's expressed needs.</p> <p>2.5.3 Subject to Customer communicating to Elastic accurate and up to date information about its needs, Elastic shall (i) inform, advise and warn the Customer in relation to Customer's use of the Services 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</p> |
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example, volumes, IT architecture configurations and time constraints).

2.5.4 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.

3.2 The third sentence of Section 3.1 (Payment) of the Agreement is hereby deleted in its entirety.

3.3 The first sentence of Section 3.2 of the Agreement is hereby deleted in its entirety and replaced with the following: All fees stated on an Order Form are exclusive of any applicable value added taxes levied upon the delivery or use of the taxable components, if any, of any Subscription purchased by Customer under this Agreement (collectively, "**Taxes**").

3.4 The second sentence of Section 5.1 of the Agreement is hereby deleted in its entirety and replaced with the following: In the event of a breach of the foregoing warranty, (i) Elastic shall have the right to re-perform the applicable Services or (ii) if Elastic is unable to re-perform the non-compliant Services in accordance with the foregoing warranty, within thirty (30) days of receipt of notice of the applicable non-conformity, Customer may elect to terminate the associated Subscription, and Elastic will promptly refund to Customer any pre-paid, unused fees paid by Customer to Elastic for such Subscription, without prejudice to Customer's other rights and remedies under French law subject to the provisions of this Agreement.

3.5 Section 5.3 of the Agreement is hereby deleted in its entirety and replaced with the following: Warranty Disclaimer. Except as set forth in Section 5.1 above, the Services are provided "As Is" without warranty of any kind and Elastic makes no additional warranties, regarding or relating to the Services or any materials furnished or provided to Customer under this Agreement. To the maximum extent permitted under applicable law and except as expressly stated otherwise in Section 6 below, Elastic specifically disclaims all other warranties including fitness for a particular purpose and non-infringement with respect to the Services and any materials furnished or provided to Customer under this Agreement.

3.6 Section 7.1 of the Agreement is hereby deleted in its entirety and replaced with the following: Excluded Liability. Subject to Section 7.3 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 lourde") or willful misconduct ("dol"), in no event shall Customer or Elastic, or their respective Affiliates, be liable for any loss of profits, loss of use, business interruption, loss of data, cost of substitute goods or services, or for any indirect damages of any kind in connection with or arising out of the performance of or failure to perform this Agreement.

3.7 Section 7.2 of the Agreement is hereby deleted in its entirety and replaced with the following: Except with respect to (i) a party's breach of its obligations under Section 4 (excluding breaches relating to Customer Information, which are subject to Section 7.3 below), (ii) a party's gross negligence ("faute lourde") or willful misconduct ("dol"), (iii) Elastic's obligations under Section 6, (iv) amounts payable by Customer under Section 3 of this Agreement and each Order Form, and (v) Customer's violations of the use restrictions set forth in this Agreement or any Addendum, in no event shall Elastic's or Customer's total and cumulative liability under any Order Form exceed the amount paid or payable by Customer to Elastic under this Agreement for the affected Services delivered and/or made available to Customer under such Order Form for the twelve (12) month period immediately prior to the first event giving rise to liability.

3.8 The second sentence of Section 7.4 (Basis of the Bargain) of the Agreement is hereby deleted in its entirety.

3.9 The first sentence of Section 8.3(a) of the Agreement is hereby deleted in its entirety and replaced with the following: Each party may terminate the Services, ipso jure and without having to file a claim, upon giving notice in writing to the other party if the non-terminating party breaches the use restrictions set forth on the Addendum applicable to such Services or otherwise commits a material breach of the applicable Addendum with respect to such Services, and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so.

3.10 The first sentence of Section 8.3(b) of the Agreement is hereby deleted in its entirety and replaced with the following: Either party may terminate this Agreement upon giving notice in writing to the other party if the non-terminating party breaches Section 3, 4, 9.1, 9.2 or 9.5 of this Agreement, or commits a material breach of this Agreement with respect to any active Services hereunder, and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so.

3.11 Section 9.3 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.

3.12 The word "acknowledges" is replaced with "is informed" in Section 9.6 (Export Control) of the Agreement.

3.13 Section 9.7 of the Agreement is hereby deleted in its entirety and replaced with the following: Feedback. Subject to its obligations under Section 4 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 Customer, or its Affiliates and their respective employees, contractors or other agents, with respect to the Products and/or 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.

3.14 Section 9.8 of the Agreement is hereby deleted in its entirety and replaced with the following: Force Majeure. 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. Customer expressly agrees that it shall not be relieved from its payment obligations by any act of Force Majeure.

3.15 Governing Law and Jurisdiction. This Agreement will be governed by the laws of France, without regard to its conflict of laws principles. The parties expressly agree that all suits hereunder will be brought solely before the competent courts located in Paris. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable courts set forth above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

4. GERMANY

4.1 Section 3.1 of the Agreement is hereby deleted in its entirety and replaced with the following: Payment. Customer agrees to pay Elastic the fees stated on each Order Form within thirty (30) days after receipt of an applicable invoice. All invoices will be paid in the currency set forth on the applicable Order Form. Except for amounts that Customer claims from Elastic that are either undisputed by Elastic or have been awarded to Customer by a competent court, all payments will be made by Customer without right of set-off or chargeback. Except as otherwise expressly provided in this Agreement and without prejudice to Section 7.1, any and all payments made by Customer pursuant to this Agreement or any Order Form are non-refundable. All commitments to make any payments hereunder or under any Order Form are non-cancellable.

4.2 The following is added to the beginning of the second sentence of Section 4.1 of the Agreement: Notwithstanding the provisions of the German Trade Secrets Act (GeschGehG).

4.3 The last sentence of Section 5.1 (Limited Services Performance Warranty) of the Agreement is hereby deleted in its entirety.

4.4 Section 5.3 of the Agreement is hereby deleted in its entirety and replaced with the following: Warranty Disclaimer. Customer shall not be entitled to claim or commence proceedings for a breach of the warranties given under Section 5.1 above unless: (i) Customer notifies 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 Customer to Elastic in accordance with Section 5.1.

4.5 The words "SUBJECT TO SECTION 7 BELOW" are hereby added to the beginning of Section 6.5 (Exclusive Remedy) of the Agreement.

4.6 Section 7.3 of the Agreement is hereby moved to a new Section 7.7. Sections 7.1, 7.2 and 7.4 of the Agreement are hereby deleted in their entirety and replaced with the following:

7.1 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.

7.2 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.

7.3 Save for the stipulation in Sections 7.1 and 7.2, the following restrictions shall apply:

(a) Elastic's total liability for simple negligence under Section 7.2 with respect to one Order Form for typical and foreseeable losses shall be limited for any and all damages to the maximum of the single amount of the order value (100%) of the affected Order Form in the calendar year where the losses occurred. 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 the potential damages of Customer 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 or of the respective Order Form is excluded.

7.4 Except as expressly set out in Sections 7.1, 7.2 and 7.3, Elastic's liability shall be excluded.

7.5 Elastic may invoke contributory negligence on Customer's part. Customer is 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.

7.6 Without prejudice to (a) Customer's rights under § 812 BGB (German Civil Code) and (b) Section 7 of this Agreement, Customer's rights under § 536 BGB (German Civil Code) are hereby excluded.

4.7 Section 9.3 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.

4.8 Governing Law and Jurisdiction. This Agreement will be governed and construed in accordance with the laws of the Federal Republic of Germany, without regard to its conflict of laws principles and the United Nations Convention on Contracts for the International Sale of Goods (UNCISG). All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of a court of competent jurisdiction in Munich, Germany and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. A breach by either party of Section 4 may cause irreparable harm for which the non-breaching party shall be entitled to seek injunctive relief.

4.9 The last three sentences of Section 9.17 (Entire Agreement; Amendment) of the Agreement are hereby deleted in their entirety.

5. HONG KONG, CHINA

5.1 Governing Law and Jurisdiction. This Agreement and any non-contractual obligation arising out of or in connection with it, is governed exclusively by the laws of Hong Kong. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All disputes arising out of or in connection with this Agreement, including its existence and validity, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("**SIAC Rules**") for the time being in force, which SIAC Rules are deemed to be incorporated by reference in this Clause. The tribunal shall consist of three arbitrators. The language of the arbitration shall be English.

6. JAPAN

6.1 The second sentence of Section 5.3 of the Agreement is hereby deleted in its entirety and replaced with the following: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES.

6.2 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of Japan without reference to its conflict of laws principles. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All disputes arising out of or in connection with this Agreement, including its existence and validity, shall be resolved by the courts with jurisdiction in Tokyo, Japan, except where mandatory law provides for the courts at another location in Japan to have jurisdiction. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any applicable courts, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

7. KOREA

7.1 Governing Law and Jurisdiction. This Agreement will be governed by the laws of the Republic of Korea, without regard to its conflicts of laws principles, and all suits hereunder will be brought in Seoul Central District Court. This Agreement

shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable courts set forth above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense. A breach or threatened breach, by either party of Section 4 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.

8. SINGAPORE

- 8.1 Governing Law and Jurisdiction. This Agreement and any non-contractual obligation arising out of or in connection with it, is governed exclusively by the law of Singapore. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All disputes arising out of or in connection with this Agreement, including its existence and validity, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which SIAC Rules are deemed to be incorporated by reference in this Clause. The tribunal shall consist of three arbitrators. The language of the arbitration shall be English. A breach or threatened breach, by either party of Section 4 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.

9. UNITED KINGDOM

- 9.1 The words "SATISFACTORY QUALITY," are added after "MERCHANTABILITY," in Section 5.3 of the Agreement.
- 9.2 The words "TO THE EXTENT PERMITTED BY LAW," are added after "OR ANY ADDENDUM," in Section 7.2 of the Agreement.
- 9.3 A new Section 7.5 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 9.3 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.

- 9.5 Governing Law and Jurisdiction. 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. This Agreement shall be governed by and construed in accordance with the laws of England and Wales whose courts shall have exclusive jurisdiction over any and all disputes arising out of or in connection with it and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. A breach or threatened breach, by either party of Section 4 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.

10. THE NETHERLAND AND ANY COUNTRY NOT LISTED IN THIS AGREEMENT (EXCEPT THE UNITED STATES)

- 10.1 The following is added after the word "DAMAGES" at the end of Section 7.1 of the Agreement: HOWEVER, WITH THE EXCEPTION OF DAMAGES CAUSED BY GROSS NEGLIGENCE (BEWUSTE ROEKELOOSHEID) OR WILFUL MISCONDUCT (OPZET) OF CUSTOMER OR ELASTIC.
- 10.2 Governing Law and Jurisdiction. This Agreement and any non-contractual obligation arising out of or in connection with it, is governed exclusively by Dutch law. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All disputes arising out of or in connection with this Agreement, including its existence and validity, shall be resolved by the courts with jurisdiction in Amsterdam, The Netherlands, except where mandatory law provides for the courts at another location in The Netherlands to have jurisdiction. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any such action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense. A breach or threatened breach, by either party of Section 4 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.