



## ELASTIC CLOUD MSP AGREEMENT

### NOT FOR EDITING OR NEGOTIATION.

Effective Date: 1 NOVEMBER 2021

This **Elastic Cloud MSP Agreement**, including all attachments, addenda, schedules and exhibits and documents referenced at URLs (collectively, this **"Agreement"**) is entered into by and between the Elastic entity (**"Elastic"**) and the entity identified as **"MSP"** (the **"MSP"**) each as set forth on the Elastic order form executed by Elastic and MSP (the **"Order Form"**) as of the date specified in such Order Form (the **"Effective Date"**), provided that, solely in the case of a U.S. Government MSP, this Agreement is entered into as of the date the Government executes the Government Contract or Order under which the U.S. Government MSP obtains the Cloud Service that is the subject of this Agreement, and, solely in the case of U.S. Government MSPs, this Agreement shall be made an addendum to the Government Contract or Order.

## 1 DEFINITIONS

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

1.1 **"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.

1.2 **"Annual MSP Program Fee"** means the program fee payable annually by MSP, separate from any Subscription-related fees, for Elastic's administration of Elastic's MSP Program.

1.3 **"Annual Period"** means, with respect to an Annual Subscription, an applicable 12-month period (or portion thereof as set forth in the Order Form) in the Subscription Term during which MSP's Annual Allotment will be made available to MSP in Monthly Allotments.

1.4 **"Annual Subscription"** means a Subscription where MSP has prepaid fees for Resources (**"Annual Allotment"**) that will be made available to MSP in Monthly Allotments during the applicable Annual Period(s).

1.5 **"Cloud Service"** means an Elastic software-as-a-service offering.

1.6 **"Consumption Period"** means, with respect to a Consumption Subscription, an applicable 12-month period (or portion thereof as set forth in the Order Form) in the Subscription Term during which MSP's Credit Allotment may be used.

1.7 **"Consumption Subscription"** means a Subscription where MSP has committed to purchase the specified quantity of consumption credits (**"Credit Allotment"**) for each Consumption Period, as set forth on the applicable Order Form.

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

1.9 **"Elastic DPA"** means Elastic's GDPR and CCPA data processing addendum set forth at <https://www.elastic.co/pdf/elastic-customer-dpa-v081521.0.pdf>. MSP shall be deemed a Customer for purposes of the Elastic DPA.

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

1.11 **"Elastic Trademarks"** means Elastic's trademarks, service marks, trade names, and service names, including the "Elastic" and "Elastic Cloud" logos.

1.12 **"Eligible Features and Functions"** means those features and functions of a Cloud Service that are eligible for use with respect to the Subscription Level purchased by MSP. A list of the Eligible Features and Functions that correspond to each Cloud Service and Subscription Level may be found at [https://www.elastic.co/cloud/as-a-service/cloud\\_services/subscriptions](https://www.elastic.co/cloud/as-a-service/cloud_services/subscriptions). Elastic may from time to time modify the Eligible Features and Functions of the Subscription Level(s) of a Cloud Service during the Subscription Term, but shall not materially reduce the functionality thereof.

1.13 **"Infringement Claim"** means a claim brought against MSP by an unaffiliated third party alleging that MSP's use, during the applicable Subscription Term, of Elastic's technology used to provide a Cloud Service (excluding any third party open source software) or the Support Services in accordance with this Agreement and during the applicable Subscription Term infringes such party's patent, copyright, or trademark, or made unlawful use of such party's trade secret.

1.14 **"Managed Services Offering"** means a product offering by MSP as expressly set forth on the Order Form that combines the features and functions of the applicable Cloud Service with additional software products or services of MSP, which have substantial additional value apart from the applicable Cloud Service, the combination of which is made available to MSP Customers.

1.15 **"Monthly Allotment"** means the Annual Allotment divided by the number of months in the applicable Annual Period.

1.16 **"Monthly Subscription"** means a Subscription that includes the right for MSP to use a Cloud Service on a month-to-month basis.

1.17 **"MSP Customer"** means an unaffiliated third-party customer of MSP that purchases a subscription to a Managed Services Offering. Agencies of the U.S. Government are not affiliated for purposes of this definition of "MSP Customer" under this clause 1.16 only.

1.18 **"MSP Customer Agreement"** means a legally enforceable agreement between MSP and an MSP Customer that contains terms and conditions that are at least as protective of Elastic as the terms set forth in Exhibit A of this Agreement.

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

1.20 **"Qualifying PO"** means a purchase order issued by MSP for the purpose of purchasing a Subscription, which (i) references the number of an applicable Order Form provided to MSP by Elastic and (ii) clearly states the purchase order is subject to the terms and conditions of this Agreement.

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

1.22 **"Resources"** means the components of a Cloud Service for which fees or credits are metered, accrued or consumed with use.

1.23 **"Software Agent"** means the object code version of an Elastic-produced software agent that MSP or MSP Customer may install on an MSP Customer endpoint to facilitate the ingestion of Content into a Cloud Service as part of the Managed Services Offering. For purposes of the Agreement and the applicable Subscription, the Software Agent shall be deemed part of the applicable Cloud Service.

1.24 **"Subscription"** means the right of MSP to access and use the applicable Cloud Service, for a fixed period of time.

1.25 **"Subscription Level"** means the level of a Subscription purchased by MSP. The Subscription Level purchased by MSP for a Cloud Service determines the specific Support Services that MSP is entitled to receive, and the Eligible Features and Functions of such Cloud Service that MSP is entitled to use.

1.26 “**Subscription Term**” means the period of time for which a Subscription is valid, as further described in Section 12.1 of this Agreement.

1.27 “**Support Services**” means maintenance and support services for users of a Cloud Service, as more fully described in the Support Services Policy.

1.28 “**Support Services Policy**” means Elastic’s support services policy for the applicable Subscription Level for a Cloud Service located at [https://www.elastic.co/legal/support\\_policy/cloud\\_services](https://www.elastic.co/legal/support_policy/cloud_services). Elastic reserves the right to reasonably modify the Support Services Policy during a Subscription Term. However, Elastic agrees not to materially diminish the level of Support Services during the applicable Subscription Term. The effective date of each version of the Support Services Policy will be stated therein, and Elastic will retain an archived copy of each version that will be made available to MSP upon request. The Support Services Policy is hereby incorporated into these terms and conditions by this reference.

1.29 “**U.S. Government MSP**” means an agency of the United States Government that serves as an MSP for other U.S. Government agencies and/or sub-agencies.

## 2 SERVICES GENERALLY; AGREEMENT SCOPE

### 2.1 Account.

2.1.1 **Registration and Subscription Levels.** In order to use a Cloud Service in connection with a Managed Services Offering, MSP must first register for one or more account(s) (each an “**Account**”). Each Account may be used in connection with one or more Subscriptions. MSP may not register multiple Accounts to simulate or act as a single Account, or otherwise access the applicable Cloud Service in a manner intended to avoid incurring fees. Communications (including notices, which shall be deemed delivered when sent) from Elastic to MSP regarding a Cloud Service will be sent in the Cloud Service user interface or to the email address registered with the Account applicable to such Cloud Service.

2.1.2 **MSP Security Obligations.** MSP is responsible for maintaining the security of the login credentials and the correct configuration of access control lists for MSP’s Accounts. MSP is fully responsible for all activities that occur under its Accounts. MSP agrees to immediately notify Elastic of any unauthorized access to or use of its Accounts, use of an Account in violation of this Agreement or any other breaches of security related to its Account(s), of which MSP becomes aware.

### 2.2 Subscriptions.

2.2.1 **Subscription Orders.** Orders for Subscriptions may be placed by MSP through (1) the execution of Order Forms with Elastic, setting forth the (i) Subscription Level, if applicable, (ii) Subscription Term, (iii) Annual Allotment(s) or Credit Allotment(s), (iv) Managed Services Offering, (v) MSP Customer, and (vi) applicable fees, including the Annual MSP Program Fee as applicable or (2) issuance by MSP of a Qualifying PO, which will be deemed to constitute, for the purposes of this Agreement, the execution by MSP of the referenced Order Form. Each executed Order Form is incorporated by reference into, and shall be governed by the terms and conditions of, this Agreement. For non-U.S. Government MSPs, each executed Order Form is incorporated by reference into, and shall be governed by the terms and conditions of, this Agreement. For U.S. Government MSPs, this Agreement shall be an addendum to the Government Contract or Order as provided in FAR 12.212(b). In the event that the parties complete a transaction between Elastic and a U.S. Government MSP and the Elastic quote or Order Form incorporates this Agreement by reference, this Agreement will govern even if the parties fail to attach this Agreement to the relevant Government Contract or Order.

2.2.2 **Annual Subscription Terms.** MSP will be provided a Monthly Allotment for use in each month of the applicable Annual Period. Unused portions of Monthly Allotments in a given month do not

carry over to any subsequent month.

2.2.3 **Consumption Subscription Terms.** MSP will be provided with the applicable Credit Allotment for use in each Consumption Period. Each Credit Allotment will be reduced over the course of the applicable Consumption Period as MSP uses Resources. Unused portions of Credit Allotments in a given Consumption Period do not carry over to any subsequent Consumption Period. Resources used during an applicable Subscription Term will be metered at the on-demand rates at the time of use..

2.2.4 **Subscription Levels.** For Annual Subscriptions, MSP’s Subscription Level shall be as set forth on the applicable Order Form. MSP may upgrade the Subscription Level of an existing Annual Subscription through execution of a new Order Form. For Consumption Subscriptions and Monthly Subscription, the Subscription Level selected by MSP in the Cloud Service at any given time shall be the Subscription Level MSP has purchased for purposes of the Agreement. If the Cloud Service permits such functionality, MSP may change the Subscription Level of a Consumption Subscription or Monthly Subscription by selecting a different Subscription Level in the Cloud Service.

2.2.5 **Monthly Subscriptions.** Monthly Subscriptions described in Sections 2.2.5.1, 2.2.5.2 and 2.2.5.3 below shall be governed by the Agreement and this Addendum.

2.2.5.1 *Expiration of Annual and Consumption Subscriptions.* After expiry of its Annual Subscription or Consumption Subscription, MSP’s continued use of a Cloud Service without another applicable Subscription will be treated as a Monthly Subscription, for which fees will be invoiced monthly in arrears.

2.2.5.2 *Self-Service Monthly Subscriptions.* Monthly Subscriptions purchased during the Term through Elastic’s website or Elastic’s product listing on a cloud service provider marketplace will continue to be paid for monthly in arrears with the payment method used at the time of first purchase.

2.2.5.3 *Monthly Subscriptions Generally.* MSP’s use of the Cloud Service under a Monthly Subscription continues until all its deployments and/or Account are deleted. Resources used each month will be charged at the on-demand rate at the time of use. Notwithstanding anything to the contrary in the Agreement or this Addendum, (1) an Order Form is not required for a Monthly Subscription, and (2) the Subscription Term for a Monthly Subscription shall commence on the date of first use under Section 2.2.5.1 or first purchase under Section 2.2.5.2, as applicable, and continue until terminated by either party at any time. MSP may terminate a Monthly Subscription by deleting the applicable deployment(s) and/or Account in the Cloud Service user interface. Termination of a Monthly Subscription under this Section will not relieve MSP of any payment obligation accrued prior to termination.

2.2.6 **Cloud Marketplace Billing.** Notwithstanding anything to the contrary in this Agreement, where MSP has purchased a Cloud Service through a cloud service provider marketplace, MSP agrees to pay the fees specified on the applicable Cloud Service pricing page(s), including any notes included on such page(s) or in any pricing tables included with the offer accepted by MSP in the cloud service provider marketplace. MSP agrees that all fees shall be paid through billing of MSP’s account with such cloud service provider and that any refund to which MSP may be entitled under this Agreement may be provided in the form of a credit back to MSP’s account with such cloud service provider.

2.3 **Affiliates.** The parties agree that their respective Affiliates may also conduct business under this Agreement by entering into Order Forms which, in some cases, may be subject to such additional and/or alternative terms and conditions to those contained in this Agreement as may be mutually agreed in the Order Form or may be, set forth in an applicable participation agreement, executed by the applicable parties which incorporates the terms and conditions of this Agreement, as amended by the terms of the participation (“**Participation Agreement**”). Accordingly, where Affiliates of the parties conduct business hereunder, references to MSP herein shall include any applicable MSP Affiliate, and references to Elastic herein shall include any applicable Elastic Affiliate. The parties agree that where either of them or one of their Affiliates enters into an Order Form with an Affiliate of the other party, that such Affiliate shall be solely responsible for performing all of its obligations under this Agreement in connection with such Order Form.

**2.4 Subscriptions Purchased Through Resellers.** With Elastic's prior written consent (which may be evidenced by Elastic's acceptance of an Order Form or Qualifying PO from the applicable Reseller), MSP may purchase Subscriptions governed by this Agreement through Resellers. Orders for Subscriptions purchased through a Reseller, including multi-year Subscriptions, are not subject to cancellation by MSP. Where MSP purchases a Subscription through a Reseller, the Reseller will enter into an Order Form with Elastic for the purchase of a Subscription that shows MSP as the "ship to" party and Reseller as the "bill to" party, and Reseller and MSP will enter into a separate agreement setting forth the fees to be paid by MSP to Reseller for such Subscription, 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 MSP, pursuant to the terms and conditions of this Agreement, for providing the Subscriptions under any such Order Form. MSP hereby acknowledges that Elastic will not be responsible for the obligations of any Reseller to MSP under such separate agreement, for the acts or omissions of Reseller, or for any third party products or services furnished to MSP by any Reseller. For the avoidance of doubt, Sections 5.1 and 5.2 below will be of no effect where MSP purchases a Subscription through a Reseller, as payment and taxes will be addressed in the agreement between Reseller and MSP.

**2.5 Compliance with Law.** MSP shall use each Cloud Service for which it has purchased a Subscription in compliance with all applicable laws, including export control and data privacy laws.

**2.6 Elastic Trademarks.** During the Agreement Term, MSP may use the Elastic Trademarks solely to identify the Cloud Service, and to promote the availability of the Cloud Service as part of the Managed Services Offering. MSP shall ensure that its use of the Elastic Trademarks conforms to Elastic's then-current trademark use policies, as the same may be modified by Elastic from time to time, and which may be found at <https://www.elastic.co/legal/trademarks>. Except as permitted by the functionality of the Cloud Service, MSP shall not remove, delete or in any manner alter the Elastic Trademarks or other intellectual property rights notices of Elastic or Elastic's suppliers, if any, appearing on the Cloud Service as delivered to MSP. MSP shall cooperate fully with Elastic, at Elastic's expense, in the defense and protection of the Elastic Trademarks, and shall promptly advise Elastic if it becomes aware of the use by MSP, its Affiliates, or its or their agents or MSP Customers, of any mark infringing any of the Elastic Trademarks. All advertising, and all promotional and marketing materials where an Elastic Trademark is used shall be of at least the same quality as similar advertising, marketing or promotional materials provided or used by Elastic. Upon Elastic's request MSP's advertising, marketing or promotional materials in which an Elastic Trademark is used shall be submitted to Elastic for its prior written approval, which shall not be unreasonably withheld. All uses of the Elastic Trademarks will inure solely to the benefit of Elastic, and MSP shall obtain no rights with respect to any of the Elastic Trademarks, other than the limited rights set forth in this section. MSP irrevocably assigns to Elastic all such right, title and interest, if any, in any of the Elastic Trademarks. At no time during or after the term of this Agreement shall MSP challenge or assist others to challenge the Elastic Trademarks or the registration thereof or attempt to register any trademarks, services marks, trade names or service names confusingly similar to the of Elastic Trademarks. Upon termination of this Agreement, MSP shall immediately cease to use all of the Elastic Trademarks.

**2.7 No Other License; No Assignment of Rights.** This Agreement grants MSP a limited right to use the applicable Cloud Service for which MSP has purchased a Subscription and the right to use the Elastic Trademarks in accordance with Section 2.6. Nothing in this Agreement shall be understood to transfer from Elastic to MSP any intellectual property rights, and all right, title and interest in and to any Cloud Service, Elastic Trademarks, and the applicable Support Services will remain (as between the parties) solely with Elastic or its third-party suppliers.

### **3 PROVISION OF ELASTIC CLOUD AND SUPPORT SERVICES**

**3.1 Elastic Cloud Service(s) Generally.** During the applicable Subscription Term, Elastic will provide to MSP, and MSP is hereby granted the right to use the Cloud Service (including the Software Agent, if applicable) for which the Subscription has been purchased, solely as part of a Managed Services Offering made available to MSP Customers

that have entered into an MSP Customer Agreement, at the Subscription Level purchased by MSP. MSP Affiliates are also permitted to use the Cloud Service at such Subscription Level provided that such use is solely as part of a Managed Services Offering made available to MSP Customers, and MSP shall be responsible for all acts and omissions of such Affiliates in connection with their use of the Cloud Service that are contrary to the terms and conditions of this Agreement.

**3.2 Limited License to Distribute Software Agent.** Subject to the terms and conditions of this Agreement, including complete payment of any and all applicable Subscription fees, Elastic grants to MSP a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) during the applicable Subscription Term to (i) distribute to MSP Customers the Software Agent; and (ii) grant to each MSP Customer that has entered into an MSP Customer Agreement the right to install and use the Software Agent on MSP Customer endpoints, solely to the extent necessary for the Eligible Features and Functions of the Cloud Service to be utilized with the Managed Services Offering and subject to the applicable MSP Customer Agreement. For purposes of the Agreement and the applicable Subscription, the Software Agent shall be deemed part of the applicable Cloud Service. For the avoidance of doubt, except for the limited right to have the Software Agent installed on MSP Customer endpoints and operated as part of the Managed Services Offering, MSP Customers do not receive a license to any Elastic-branded software in connection with their purchase of the right to use the Managed Services Offering.

**3.3 Provision of Support Services.** During the applicable Subscription Term for a Cloud Service, Elastic will provide MSP with Support Services for the applicable Managed Services Offering in accordance with the applicable Support Services Policy and the Subscription Level purchased by MSP. Support Services will only be delivered remotely, electronically, through the Internet, and when applicable, depending on the particular Subscription Level purchased, via telephone.

**3.4 Restrictions.** Support Services are provided to MSP solely for MSP's internal use in connection with developing and providing the Managed Services Offering (which includes use by MSP Affiliates) and/or for the benefit of MSP Customers that have entered into an MSP Customer Agreement and solely for such MSP Customers' internal use (which includes MSP Customer Affiliates), and are subject to the quantitative limitations set forth on the applicable Order Form, and applicable limitations on the number of support contacts set forth in the Support Services Policy. In addition, MSP agrees to not:

**3.4.1** use the Support Services to supply any consulting, support or training services regarding any Cloud Service to any third party other than MSP Customers; or

**3.4.2** use Support Services (i) for one Subscription to obtain support for another Subscription with a lower Subscription Level, (ii) to obtain support for any use by MSP or MSP Customers of Elastic software for which no Subscription has been purchased, or (iii) to obtain support for any use by MSP or MSP Customers of Elastic software that is offered as a service by any third party.

MSP agrees that any knowing failure to comply with the terms of this Section 3.4 will be deemed a material breach of this Agreement. In the event of any failure to comply this Section 3.4, Elastic may, without prejudice to any other remedies available hereunder, at law or in equity, suspend the provision of Support Services to MSP if MSP fails to cure such breach within fifteen (15) days after receipt of written notice thereof.

### **4 INFRINGEMENT CLAIMS**

**4.1 Obligation.** Elastic will, at its expense: defend or settle an Infringement Claim and will indemnify MSP against and pay (1) any settlement of such Infringement Claim consented to by Elastic or (2) any damages finally awarded by a court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim. 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 MSP or imposes on MSP any obligation other than the obligation to cease using the Cloud Service or Support Services that are subject to the Infringement Claim, unless MSP has first consented in writing to the applicable terms of such settlement



agreement that are in conflict with the foregoing limitations. In the case of U.S. Government MSPs, MSP shall be represented as provided under 28 U.S.C. § 516. The Indemnified Party will not, without the prior written consent of the Indemnifying Party, make any admission or prejudicial statement, or settle, compromise or consent to the entry of any judgment with respect to any pending or threatened claim.

**4.2 Exclusions.** Elastic will have no obligation to MSP to the extent any Infringement Claim or resulting award is based upon or results from: (i) MSP's use of a Cloud Service or the applicable Support Services in a country that is not a contracting state to the Patent Cooperation Treaty; (ii) a modification of the Cloud Service that is not performed by or on behalf of Elastic; (iii) the combination, operation, or use of the Cloud Service 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; (iv) use of the Cloud Service other than in accordance with the terms and conditions of this Agreement (including, without limitation, use of the Cloud Service for any purpose other than that set forth in Section 3.1); or (v) any third party open source software and/or third party computing infrastructure products or services.

**4.3 Certain Remedies.** If a Cloud Service or the Support 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 MSP to continue to use the Cloud Service or the applicable Support Services (as applicable); (ii) modify the Cloud Service or the Support Services (as applicable) 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 MSP's right to use the Cloud Service and/or Support Services (as applicable), and, at MSP's written request, terminate all affected Order Forms and promptly refund to MSP any unused pre-paid fees paid by MSP to Elastic under such terminated Order Forms.

**4.4 Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 4 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC, AND THE EXCLUSIVE REMEDY OF MSP, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT, OR MISAPPROPRIATION OF ANY TRADE SECRET, BY ANY CLOUD SERVICE AND/OR THE SUPPORT SERVICES.

**4.5 Obligations of MSP.** Except with respect to a matter addressed under Section 4.1 above, any non-U.S. Government MSP will, at its expense (i) defend, or at its option settle, but subject to Elastic's prior written consent, not to be unreasonably withheld, a claim brought by an unaffiliated third party against Elastic, its contractors, suppliers, licensors, and/or its or their respective directors, officers, employees and agents, arising out of or related to MSP's or its Affiliate's use of the Cloud Service or the applicable Support Services, including, without limitation, MSP's or its Affiliates' breach of Section 2.5 and/or Section 8.1 of this Agreement, and (ii) indemnify Elastic against and pay (1) any settlement of such claim or (2) any damages finally awarded to such third party by a court of competent jurisdiction as the result of such claim. MSP shall not enter into any settlement agreement with respect to claim(s) for which it has an indemnification obligation under this Agreement if such settlement agreement requires any admission of liability or wrongdoing on the part of Elastic or imposes on Elastic any obligation, unless Elastic has first consented in writing to the applicable terms of such settlement agreement that are in conflict with the foregoing limitations. Any U.S. Government MSP agrees that any sovereign immunity for a claim described in this Section 4.4 shall apply to Elastic to the same extent such immunity applies to the U.S. Government MSP. Any U.S. Government MSP shall assert and reasonably complete actions to support claims that sovereign immunity described in this Section 4.4 applies to Elastic.

**4.6 Conditions.** The obligations of a party to indemnify, defend and hold harmless, in this Section 4 (the "**Indemnifying Party**") are conditioned upon the party receiving such indemnity (the "**Indemnified Party**") (i) notifying the Indemnifying Party promptly of any threatened or pending claim, provided that failure to provide such notice will only relieve the Indemnifying Party of its obligations under this Section 4 to the extent its ability to defend or settle an applicable claim is prejudiced by such failure to provide notice, (ii) giving the Indemnifying Party, at the

Indemnifying Party's expense, reasonable assistance and information requested by the Indemnifying Party in connection with the defense and/or settlement of the claim and (iii), other than with respect to U.S. Government MSPs, tendering to the Indemnifying Party sole control over the defense and settlement of the claim. The Indemnified Party's counsel will have the right to participate in the defense of the claim, at the Indemnified Party's expense. The Indemnified Party will not, without the prior written consent of the Indemnifying Party, make any admission or prejudicial statement, or settle, compromise or consent to the entry of any judgment with respect to any pending or threatened claim.

## 5 FEES AND PAYMENT; TAXES

**5.1 Fees and Payment.** Unless otherwise set forth on the Order Form, MSP agrees to pay Elastic the fees due under each Order Form or otherwise under this Agreement within thirty (30) days after receipt of an applicable invoice. Elastic will invoice MSP for any additional amounts owed based on usage in excess of the purchased Resources, at its then-current rates, monthly in arrears, unless MSP has provided Elastic with valid credit card information and authorized Elastic to charge such credit card, in which case, Elastic will charge MSP's credit card for such excess usage monthly in arrears. Elastic reserves the right to change such fees upon thirty (30) days' notice. The invoice 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 MSP 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.

**5.2 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 any Subscription purchased by MSP under this Agreement (collectively, "**Taxes**"). Taxes do not include any taxes on the net income of Elastic or any of its Affiliates. Unless MSP 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, MSP will pay and be solely responsible for all Taxes. If MSP is required by any foreign governmental authority to deduct or withhold any portion of the amount invoiced for the delivery or use of a Cloud Service or the Support Services under this Agreement, MSP shall increase the sum paid to Elastic by an amount necessary for the total payment to Elastic equal to the amount originally invoiced.

**5.3 Disputes.** MSP may dispute amounts billed by providing notice within ten (10) days of being billed for such amounts, or MSP will be deemed to have waived its right to dispute such amounts.

**5.4 Payment Information.** MSP acknowledges and agrees that any credit card and related billing and payment information provided to Elastic may be shared by Elastic with companies who work on Elastic's behalf, such as payment processors and/or credit agencies, but solely for the purposes of checking credit, effecting payment to Elastic and servicing MSP's Account. Elastic shall not be liable for any use or disclosure of such information by such third parties.

## 6 CONFIDENTIAL INFORMATION

**6.1 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 MSP'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 a Cloud Service, anything provided by either party to the other in connection with a Cloud Service or the Support Services provided under this Agreement, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received,

stored or transmitted electronically) even though specific designation as Confidential Information has not been made. Confidential Information also includes any notes, summaries, analyses of the foregoing that are prepared by the receiving party.

**6.2 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.

**6.3 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.

**6.4 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 investors, potential acquirers, accountants, attorneys and parent organizations pursuant to the terms of a non-disclosure or confidentiality agreement. If MSP is using a third party provider to host the Cloud Service, then such provider may also receive, subject to a confidentiality obligation, information related to the terms of this Agreement or MSP's usage of the Cloud Service.

**6.5 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.

## **7 MSP CONTENT; DATA PROCESSING**

**7.1 Definition of Content.** In connection with MSP's use of a Cloud Service, MSP may enable the ingestion of information, content and data by MSP or its MSP Customers to the Cloud Service or may retrieve such information, content and data (collectively, "**Content**") from such Cloud Service.

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

**7.3 MSP Responsibility for Content.** MSP is fully responsible for the content, accuracy and completeness of such Content, and any loss, liabilities or damages resulting from the Content, regardless of the nature of the Content including, without limitation, whether the Content consists of, including but not limited to, data, text, graphics, audio, video,

or computer software. MSP is solely responsible for backing up or otherwise making duplicates of Content. MSP represents and warrants to Elastic that: (i) MSP owns or has the necessary licenses to provide the Content to Elastic, and the provision of the Content to, and use of the Content by, Elastic as contemplated herein will not infringe the intellectual property rights, including but not limited to copyright, patent, trademark or trade secret rights, of any third party; and (ii) the Content does not contain any executable Malware (defined in Section 8.1 below). MSP is solely responsible for verifying that use by its end users of a Cloud Service complies with any requirements under applicable law or regulation governing access to or use of the Content.

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

**7.5 License to Elastic; Deletion of Content.** By submitting Content to Elastic, MSP hereby grants Elastic a sublicensable, worldwide, royalty-free, and non-exclusive right to reproduce, modify, adapt and publish the Content solely for the purpose of enabling Elastic to provide MSP with the applicable Cloud Service and Support Services. Once MSP's Subscription expires or terminates and MSP discontinues use of the applicable Cloud Service, Elastic will delete all MSP Content from the applicable Cloud Service, using commercially reasonable efforts to do so within forty-five (45) days of such discontinuance, other than copies of Content (i) required to be retained by applicable law or (ii) stored in Elastic's backups and disaster recovery systems, which in each case shall be deleted in the ordinary course in accordance with Elastic's data retention policies.

**7.6 Data Retrieval.** MSP is solely responsible for deleting or retrieving Content from a Cloud Service prior to termination of the applicable Subscription and/or MSP's Account for any reason.

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

## **8 RESTRICTIONS ON USE**

**8.1 Restrictions.** MSP shall use each Cloud Service in compliance with all applicable laws, including export control and data privacy laws. MSP shall not: (i) execute or attempt to execute any computer viruses, worms, time bombs, Trojan horses and other harmful or malicious code, routines, files, scripts, agents or programs ("**Malware**") in any Cloud Service or use any Cloud Service to transmit Malware; (ii) use any Cloud Service to store or distribute any information, material or data that is harassing, threatening, infringing, libelous, unlawful, obscene, or which violates the privacy or intellectual property rights of any third party; (iii) access or use any Cloud Service to compete against Elastic; (iv) access or use any Cloud Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; (v) except as expressly permitted herein, make access to any Cloud Service through its account available to any third party; (vi) other than as part of Managed

Services Offering to a MSP Customer, sell, resell, rent, lease, offer any time sharing arrangement, service bureau or any service based upon, any Cloud Service; (vii) interfere with or disrupt the integrity, security or performance of any Cloud Service or third-party data contained therein; (viii) attempt to gain unauthorized access to any Cloud Service or any associated systems or networks; (ix) modify, make derivative works of, disassemble, decompile or reverse engineer any Cloud Service or any component thereof; (x) use any Cloud Service to process any protected health information as defined by the Health Insurance Portability and Accountability Act of 1996; (xi) use the Cloud Service to store or process any classified information (i.e., information given a security classification by a government body and protected against unauthorized disclosure under applicable law) or data subject to the International Traffic in Arms Regulations maintained by the U.S. Department of State; or (xii) use any Cloud Service in furtherance of the violation of the rights of others.

**8.2 Suspension.** If (i) MSP or Reseller (as applicable) has not timely paid all fees due under this Agreement or an applicable Order Form, or (ii) Elastic believes, in its sole discretion, that MSP has violated or attempted to violate Sections 3.4 or 8.1 of this Agreement, or that MSP's use of a Cloud Service presents a material security risk, Elastic may suspend access to such Cloud Service until the violation has been corrected. Elastic will use reasonable efforts to provide MSP with advance written notice prior to implementing such suspension and will work with MSP to resolve the underlying issue.

**8.3 Technical Controls.** If MSP's use of a Cloud Service materially degrades the performance of such Cloud Service for other customers, rate limiting controls may result in the temporary reduction or a pause in the responsiveness of such Cloud Service. Furthermore, MSP shall contact Elastic if MSP desires to assess performance by benchmarking for more than five minutes.

## **9 LIMITED WARRANTY, WARRANTY DISCLAIMER**

**9.1 Limited Support Services Warranty.** Elastic warrants that during each Subscription Term it will perform the Support Services in a professional, workmanlike manner, consistent with generally accepted industry practice, and in substantial accordance with the Support Services Policy. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and MSP's exclusive remedy, shall be for Elastic to re-perform the Support Services.

**9.2 Limited Product Performance Warranty.** Elastic warrants that during each Subscription Term the applicable Cloud Service will perform in all material respects in accordance with the applicable Documentation. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and MSP's exclusive remedy, shall be for Elastic to (i) correct any non-conformity in the Cloud Service, or (ii) if Elastic is unable to provide such a correction within thirty (30) days of receipt of notice of the applicable non-conformity, then upon request from MSP, MSP may elect to terminate the applicable Order Form and the associated Subscription, and Elastic will promptly refund to MSP any pre-paid, unused fees paid by MSP to Elastic for the applicable Subscription, provided that, upon payment of such refund, all rights granted in Sections 3.1 and 3.2 and Elastic's obligation to provide Support Services with respect to such Cloud Service shall immediately terminate.

**9.3 Warranty Disclaimer.** EXCEPT AS SET FORTH IN SECTIONS 9.1 AND 9.2 ABOVE, THE SUPPORT SERVICES AND APPLICABLE CLOUD SERVICE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND ELASTIC MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE SUPPORT SERVICES, ANY CLOUD SERVICE OR ANY MATERIALS FURNISHED OR PROVIDED TO MSP UNDER THIS AGREEMENT. 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 CLOUD SERVICE(S), THE SUPPORT SERVICES, THE DOCUMENTATION, AND ANY OTHER SERVICES OR OTHER MATERIALS PROVIDED BY ELASTIC HEREUNDER, AND WITH RESPECT TO THE USE OF THE FOREGOING. MSP AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION WITH ITS USE OF THE SUPPORT SERVICES OR APPLICABLE CLOUD SERVICE. IN ADDITION, MSP UNDERSTANDS AND

AGREES THAT THE SUPPORT SERVICES AND APPLICABLE CLOUD SERVICE AND ANY MATERIALS FURNISHED OR PROVIDED TO MSP UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

## **10 MSP OBLIGATIONS**

**10.1 No Unauthorized Warranties.** MSP shall make no representations or warranties with respect to the Cloud Service beyond those contained herein. MSP shall be solely responsible for, and Elastic shall have no legal obligation to honor, any warranties that MSP provides to MSP Customers to the extent that such warranties are broader or greater in scope than those made by Elastic to MSP hereunder. MSP shall defend, indemnify and hold Elastic and its affiliated companies harmless from any and all costs, losses, damages, liabilities and expenses (including reasonable attorney's fees and costs of litigation) resulting from MSP's failure to comply with this section.

**10.2 MSP Customer Support By MSP.** MSP will provide direct technical support to MSP Customers. MSP's technical support personnel shall include two (2) persons certified on the Cloud Service MSP is using in accordance with such reasonable requirements as Elastic may establish from time to time. Certification will be at MSP's expense and at Elastic's published rates. In no event shall Elastic have any obligation to provide Support Services directly to MSP Customers.

## **11 LIMITATION OF LIABILITY**

**11.1 Excluded Damages.** IN NO EVENT SHALL MSP 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.

**11.2 Damages Cap.** EXCEPT WITH RESPECT TO (I) A PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 6, (II) ELASTIC'S OBLIGATIONS UNDER SECTION 4.1, (III) MSP'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 4.5, 10.1, AND 13.1, (IV) AMOUNTS PAYABLE BY MSP UNDER SECTION 5 OF THIS AGREEMENT AND EACH ORDER FORM, AND (V) MSP'S VIOLATIONS OF THE USE AND DISTRIBUTION RESTRICTIONS SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL ELASTIC'S OR MSP'S TOTAL, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID OR PAYABLE BY MSP TO ELASTIC UNDER THIS AGREEMENT FOR THE AFFECTED CLOUD SERVICE(S) AND/OR SUPPORT SERVICES DELIVERED AND/OR MADE AVAILABLE TO MSP UNDER SUCH ORDER FORM IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY.

**11.3 Basis of the Bargain.** THE ALLOCATIONS OF LIABILITY IN THIS SECTION 11 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF ELASTIC FOR THE SUPPORT SERVICES AND CLOUD SERVICE(S) PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## **12 TERM AND TERMINATION**

**12.1 Subscription Term.** The initial Subscription Term for each Subscription will commence and expire in accordance with the start date and end date set forth on the applicable Order Form, unless earlier terminated in accordance with Section 12.3 below. Thereafter, each Subscription shall automatically renew for additional one (1) year periods (or for such longer period as may be set forth on a renewal Order Form executed by the parties) unless either party gives written notice to the other of its intention not to renew the Subscription at least thirty (30) days prior to the expiration of the then-current term. The initial

Subscription term, plus any subsequent renewal Subscription term, shall be the "Subscription Term".

**12.2 Agreement Term.** This Agreement will commence on the Effective Date and, unless earlier terminated in accordance with Section 12.3 below, continue in force and effect for a period of three (3) years. Thereafter, this Agreement will automatically renew for additional one (1) year periods, unless either party gives written notice to the other party of its intent not to renew this Agreement no later than sixty (60) days prior to expiration of the then-current term. The initial term of this Agreement, plus any subsequent renewal term, shall be the "**Term**" of this Agreement. Notwithstanding any expiration of this Agreement, its terms will continue to apply to any Subscription that has not been terminated or for which the Subscription Term has not expired.

### **12.3 Termination.**

**12.3.1 Subscriptions.** Non-U.S. Government MSPs: Each party may terminate a Subscription, 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 Subscription, 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 a Subscription, the rights and obligations of the parties with respect thereto will, subject to Section 12.4 below, cease, provided that termination of a Subscription under this subsection 12.3.1 will not result in termination of any other Subscriptions. U.S. Government MSPs: Termination shall be governed by Federal Acquisition Regulation ("FAR") clause 52.212-4(l) and (m), and the Contract Disputes Act, 41 U.S.C. §§ 601-613.

**12.3.2 Agreement.** Either party may terminate this Agreement upon giving notice in writing to the other party if the non-terminating party commits a material breach of this Agreement with respect to any active Subscriptions hereunder, and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. For the avoidance of doubt, termination of this Agreement under the first sentence of this subsection 12.3.2 will result in the termination of all Subscriptions and Order Forms. Either party may also terminate this Agreement for any reason or no reason upon ninety (90) days' prior written notice to the other party, provided that termination of the Agreement pursuant to this sentence will not result in termination of any Subscriptions or their respective Order Forms (including any multi-year Subscriptions set forth on such Order Forms).

**12.4 Survival.** Upon the expiration or termination of a Subscription or this Agreement, (i) MSP shall have no further rights under the affected Subscription(s); (ii) any payment obligations accrued under Section 5, as well as the provisions of Sections 4, 6, 7.5, 7.6, 9, 10.1, 11, 12.4 and 13 of this Agreement will survive such expiration or termination. Any outstanding balance under a Subscription shall become immediately due and payable upon termination of the Subscription for any reason. Upon termination of this Agreement for any reason: (i) MSP shall immediately cease using or destroy any unused sales literature and other written information and materials supplied by Elastic pursuant to this Agreement or which contain Elastic's Trademarks, and shall provide Elastic with written certification of such cessation or destruction; (ii) MSP shall immediately cease to identify itself as an authorized distributor for Elastic or otherwise affiliated in any manner with Elastic; and (iii) the licenses granted to MSP under Sections 2.6 and 3.2 shall immediately terminate.

## **13 GENERAL**

**13.1 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. MSP shall defend, indemnify and hold Elastic and its affiliated companies harmless from any and all costs, losses, damages, liabilities and expenses (including reasonable attorney's fees and costs of litigation) resulting from MSP's failure to comply with this section

**13.2 Assignment; Subcontracting.** For Non-U.S. Government MSPs: 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 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 successors and assigns. Nothing will restrict Elastic from subcontracting its obligations under this Agreement to any third parties. U.S. Government MSPs: 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).

**13.3 Attorney's 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 (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. Notwithstanding the foregoing, for U.S. Government MSPs, there shall be no entitlement to attorneys' fees, expert witness fees, costs of suit and expenses, except to the extent, if any, permitted by Federal statute and regulations.

**13.4 Export Control.** MSP acknowledges that the Cloud Service(s) and Support Services, and technologies related thereto are subject to the Export Administration Regulations ("**EAR**") (15 C.F.R. Parts 730-774 (2010)) and the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control. MSP 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. MSP acknowledges that remote access to a Cloud Service may in certain circumstances be considered a re-export of such Cloud Service, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

**13.5 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.

**13.6 Future Features and Functions.** MSP understands and agrees that any features or functions of services or products discussed in a roadmap review or otherwise 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 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, MSP agrees that it is not entering into this Agreement and will be purchasing products and services based solely upon features and functions that are currently available as of the time an Order Form is executed, and not in expectation of any future feature or function.

**13.7 Governing Law; Jurisdiction; Venue.**

**13.7.1 Non-U.S. Government MSPs in California.** If MSP is located in California (as determined by the MSP address on the applicable Order Form), this Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court located in Santa Clara County. All U.S. Government MSPs: No matter where located, for all U.S. Government MSPs this Agreement shall be governed by the Federal law of contracts.

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

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

**13.7.4 Equitable Relief.** A breach or threatened breach, by either party of Section 6 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond. Notwithstanding the foregoing, the parties acknowledge that with respect to non-U.S. Government MSPs equitable remedies may not be available unless, and to the extent, expressly provided in Federal statute and regulations.

**13.8 MSP Identification.** MSP consents to Elastic's identification of MSP as a user of the Support Services and Cloud Service, on its website, through a press release issued by Elastic and in other promotional materials.

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

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

**13.11 Product Metadata.** The Cloud Service may provide Product Metadata (defined below) to Elastic. Product Metadata does not include any MSP or MSP Customer personal data or any content that MSP processes or stores in the Cloud Service in connection with use by MSP of the Cloud Service. Elastic uses Product Metadata for security, support, product and operations management, and research and

development. Elastic does not share Product Metadata with third parties. "**Product Metadata**" is statistical and other information about a user's configuration and use of the Cloud Service, 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/or endpoint sensor detection events) and feature usage.

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

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

**13.14 Feedback.** MSP, MSP's Affiliates, and their respective agents, may volunteer feedback to Elastic, and/or its Affiliates, about a Cloud Service and/or the Support Services ("**Feedback**"). Elastic and its Affiliates shall be irrevocably entitled to use that Feedback, for any purpose and without any duty to account, provided that, in doing so, they may not breach their obligations of confidentiality under Section 6 of this Agreement.

**13.15 Entire Agreement; Amendment.** This Agreement, together with any Order Forms executed by the parties and the Support Services Policy, 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. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement. Execution of a scanned copy will have the same force and effect as execution of an original, and a scanned signature will be deemed an original and valid signature. 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), (ii) this Agreement, and (iii) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if MSP issues any purchase orders or similar documents in connection with its purchase of a Cloud Service and/or Support Services, MSP shall do so only for the purpose of Section 2.2.1(2) or for MSP's 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 MSP's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (i) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (ii) an amendment of this Agreement, nor (iii) an agreement to amend this Agreement. Except as expressly provided in 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 MSP by their duly authorized representatives.



**Exhibit A**  
**Minimum Terms**

This Exhibit A to the Agreement sets forth the minimum terms to be included in the MSP Customer Agreement.

**Minimum Terms:**

1. MSP Customer shall look solely to MSP to satisfy any obligations under the MSP Customer Agreement;
2. MSP Customer shall comply with all laws applicable to its use of the Managed Services Offering, including data privacy laws and U.S. export control and sanctions laws;
3. MSP Customer shall not sell, resell, rent, lease, offer any time-sharing arrangement, service bureau or any service based upon, the Managed Services Offering; and
4. MSP Customer shall not make available to any third party any analysis of the results of operation (including benchmarking results) of the Cloud Service or, if applicable, Software Agent, as accessed via the Managed Services Offering.

If the MSP distributes to the MSP Customer a Software Agent pursuant to Section 3.2 of the Agreement, then the following additional terms must be included in the MSP Customer Agreement:

5. That the Software Agent is licensed, not sold, as a component to be managed by MSP as part of the Managed Services Offering, and is not licensed on a stand-alone basis;
6. That title to the Software Agent does not pass to the MSP Customer, and MSP and its licensors own and retain all intellectual property rights in the Software Agent except those rights expressly granted by MSP under the MSP Customer Agreement;
7. No direct warranties from Elastic to or for the benefit of the MSP Customer;
8. That each license granted to an MSP Customer shall be a non-exclusive license to install and use, in object code form, the Software Agent, solely to the extent necessary for the Software Agent to be managed by MSP as part of the Managed Services Offering and for the duration of the applicable Subscription Term;
9. Restrictions on use of the Software Agent as set forth under Restrictions set forth below;
10. An export control notice similar to Section 13.4 (Export Control) in this Agreement; and
11. A product metadata notice similar to Section 13.11 (Product Metadata) in this Agreement.

**Restrictions:**

MSP Customer agrees not to:

- (i) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software Agent or any portion thereof, in either case, that has not been licensed in source code form by Elastic, to human-readable form except and only to the extent any such restriction is prohibited by applicable law,
- (ii) deploy or use the Software Agent on a stand-alone basis or for any purpose other than as a component to be managed by MSP as part of the Managed Services Offering;
- (iii) prepare derivative works from, modify, copy or use the Software Agent in any manner except as expressly permitted in the MSP Customer Agreement;
- (iv) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software Agent in whole or in part to any third party;
- (v) alter or remove any marks and notices in the Software Agent; or
- (vi) (a) access or use any Elastic-hosted infrastructure or related data, systems, or networks (collectively, "**Elastic-Hosted infrastructure**") that interface with the Software Agent to 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.