



## ELASTIC OEM LICENSE AND SUPPORT AGREEMENT

### NOT FOR EDITING OR NEGOTIATION.

### Effective Date: 1 NOVEMBER 2021

This **Elastic OEM License and Support Agreement**, including all attachments, schedules and exhibits, and documents at referenced URLs, all of which are incorporated herein by this reference (collectively, this “**Agreement**”), by and between the Elastic entity (“**Elastic**”) and the entity identified as “**OEM**” (“**OEM**”), each as set forth on the signature block of the Elastic order form executed by Elastic and OEM (“**Order Form**”), as of the date specified on such Order Form (“**Effective Date**”), provided that, solely in the case of a U.S. Government OEM, this Agreement is entered into as of the date the Government executes the Government Contract or Order under which the U.S. Government OEM obtains the Software that is the subject of this Agreement, and, solely in the case of U.S. Government OEM, this Agreement shall be made an addendum to the Government Contract or Order.

### 1 DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings, and other defined terms shall have the meanings set forth where such terms are first used:

1.1     **“Addressable”** with respect to RAM means the quantity of RAM that benefits the execution of the applicable software.

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     **“Billable Enterprise Software”** means all Software, except for Software branded under the names Beats, Logstash, Endgame Agent, and Elastic Endpoint agent (or any successor or alternative names for such Software).

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

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

1.6     **“Elastic Trademarks”** means Elastic’s trademarks, service marks, trade names, and service names.

1.7     **“Eligible Features and Functions”** means those features and functions of the Software that are eligible for use with respect to the Subscription Level purchased by OEM. A list of Eligible Features and Functions that correspond to each version of the Software may be found at <https://www.elastic.co/subscriptions>. Elastic may from time to time modify the Eligible Features and Functions of the Subscription Level(s) of the Software during the Subscription Term, but shall not materially reduce the functionality thereof.

1.8     **“End User”** means an end user of (i) the Self-managed Bundled Products, who obtains the same from OEM, without the right to further distribute or sublicense the Self-managed Bundled Products or (ii) the SaaS Bundled Products.

1.9     **“End User Billable Nodes”** means with respect to an End User and a Subscription, a number that is the greater of (i) the number of Nodes running on all servers operated by or on behalf of the End User and are covered by the Subscription, and (ii) the total GB of RAM Addressable by all Nodes running on all servers operated by or on behalf of the End User and are covered by the Subscription divided by 64, with any fractional remainder being rounded up to the next whole number. For purposes of this Section 1.9 only, (a) OEM shall be considered an End User with respect to its use of the Software in connection with any SaaS Bundled Products, and (b) any such End User Billable Nodes will be included in the Total Billable Nodes calculation.

1.10    **“End User License Agreement”** or **“EULA”** means an end user license agreement between OEM and an End User that includes, at a minimum, terms that are substantially similar to those set forth on Exhibit A with respect to the Software included in the Self-managed Bundled Products or with respect to the SaaS Bundled Products.

1.11    **“End User Resource Units”** means, with respect to an End

User and a Subscription, a number that is equal to the total GB of RAM Addressable by all Billable Enterprise Software running on all servers operated by or on behalf of the End User, divided by 64, with any fractional remainder being rounded up to the next whole number. For purposes of this Section 1.11 only, (i) OEM shall be considered an End User with respect to its use of the Software in connection with any SaaS Bundled Products, and (ii) any such End User Resource Units will be included in the Total Resource Units calculation.

1.12    **“Fees”** means the annual program and development fees, and fees for Subscriptions, as set forth on an Order Form, to be paid by OEM to Elastic.

1.13    **“Infringement Claim”** means a claim brought against OEM by an unaffiliated third party alleging that the distribution or use by OEM of the Software 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    **“Level 1 Support”** means the provision of a “Help Desk” and/or hotline for error logging and telephone assistance with software problem identification.

1.15    **“Level 2 Support”** means the provision of a hotline, telephone assistance with troubleshooting, problem isolation and reproduction and assistance with a software program workaround or configuration correction.

1.16    **“Level 3 Support”** means the provision of advanced system level support for analyzing and correcting defects and other problems with the Software that are unable to be resolved by properly qualified personnel providing Level 2 Support.

1.17    **“License Key”** means an alphanumeric code that enables use of software.

1.18    **“Malicious Code”** means any code that is designed to harm, or otherwise disrupt in any unauthorized manner, the operation of OEM’s or an End User’s computer programs or computer systems or destroy or damage data. For clarity, Malicious Code shall not include any software bugs or errors handled through Support Services, or any standard features or functions of the Software and/or any License Key that are intended to enforce the temporal and/or other limitations on the scope of the use of the Software to the scope of the license granted to OEM.

1.19    **“Node”** means an instance of the Software product known as “Elasticsearch,” running on a server, which is not configured as a dedicated client node, dedicated coordinating node, or dedicated ingest node, as described in the Elasticsearch documentation.

1.20    **“Non-Production Purposes”** means use of the Software for any non-production, purposes, including development, demonstration, trial, marketing, testing, and training purposes.

1.21    **“OEM Products”** means the computer hardware and/or software products that are identified on the applicable Order Form.

1.22    **“Order Form”** means an Elastic quote or ordering document pursuant to which OEM, or an Elastic Reseller acting on OEM’s behalf, may order Subscriptions from Elastic.

1.23    **“Qualifying PO”** means a purchase order issued by OEM for the purpose of purchasing a Subscription, which (i) references the number of an applicable Order Form provided to OEM by Elastic and (ii)

clearly states the purchase order is subject to the terms and conditions of this Agreement.

1.24     **"SaaS Bundled Products"** means a product offering by OEM as expressly set forth on Exhibit A that is based on the features and functions of the SaaS Bundled Product and made available to End Users as a service, which service is managed by OEM on servers owned or controlled by OEM or in OEM's public cloud account. For the avoidance of doubt, such End Users do not receive a license or sublicense to any Software in connection with their purchase of the right to use the SaaS Bundled Products, and do not own or control the servers on which the software components of the SaaS Bundled Products are run.

1.25     **"Self-managed Bundled Products"** means Software bundled for distribution with OEM Products.

1.26     **"Software"** means Elastic software that is licensed under a Subscription, including all updates thereto and new releases thereof, that are made generally available by Elastic to its customers during the applicable Subscription Term.

1.27     **"Subscription"** means OEM's right, for a fixed period of time, to (i) (a) distribute to End Users, and to grant End Users the right to use, the Software as part of the Self-managed Bundled Product and (b) use the Software as part of the SaaS Bundled Products, collectively, for the number of Total Billable Nodes or Total Resource Units purchased in connection with such Subscription, and (ii) receive Level 3 Support from Elastic.

1.28     **"Subscription Level"** means the level of a Subscription purchased by OEM, as indicated on an applicable Order Form. The Subscription Level purchased by OEM for the Software determines the specific Support Services that OEM is entitled to receive, and the Eligible Features and Functions of the Software that OEM and its End Users are entitled to use, as described more fully at <https://www.elastic.co/subscriptions>.

1.29     **"Subscription Term"** means the period of time for which a Subscription is valid.

1.30     **"Support Services"** means maintenance and support services for Software, as more fully described in the Support Services Policy.

1.31     **"Support Services Policy"** means Elastic's support services policy set forth at [https://www.elastic.co/support\\_policy/english](https://www.elastic.co/support_policy/english), which provides the details of Elastic's Support Services obligations. 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 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 OEM upon request.

1.32     **"Territory"** means the world, except with respect to countries, territories or jurisdictions where the marketing, sale or distribution of the Software and Support Services is prohibited by the applicable laws or regulations of the United States or of OEM's jurisdiction (including applicable export laws) or the applicable laws and regulations of such countries, territories or jurisdictions.

1.33     **"Third Party Open Source Software"** means third party open source libraries, components, utilities and other third party open source software, included with the Software, which may have applicable license terms as identified on a website designated by Elastic (currently, <https://www.elastic.co/third-party-dependencies>) or otherwise provided with the applicable Software or Documentation.

1.34     **"Total Billable Nodes"** means, with respect to a Subscription, the sum of all End User Billable Nodes covered by the Subscription.

1.35     **"Total Resource Units"** means, with respect to a Subscription, the sum of all End User Resource Units covered by the Subscription.

Agreement, and the payment by OEM of applicable Fees, Elastic hereby appoints OEM, for the Term of this Agreement, as a non-exclusive distributor of the Software as part of the Self-managed Bundled Products, the SaaS Bundled Products, and Documentation in the Territory, and OEM hereby accepts such appointment. Elastic reserves the right to market and distribute the Software and Documentation directly, through other distributors and dealers, and through any other channel of distribution at any time without restriction as to location or application. OEM shall not be entitled to any commission, discount or other compensation hereunder with respect to sales of licenses arranged by Elastic or any other reseller or distributor of the Software.

2.2     Grant of Licenses. Subject to the terms and conditions of this Agreement, including the payment of any and all applicable Fees, Elastic hereby grants OEM a non-exclusive, non-transferable, royalty-free, fully paid up, limited, right and license, in the Territory and during the applicable Subscription Term, to: (i) use, in object code format, the Software for Non-Production Purposes, (ii) distribute Software and associated Documentation to End Users, in object code format and solely as part of the Bundled Products, (iii) use, in object code format, the Eligible Features and Functions of the Software applicable to the Subscription Level OEM has purchased, solely as part of the SaaS Bundled Products made available to the End Users that have entered into the applicable End User License Agreement (which OEM shall ensure is agreed to by each End User so as to make it a legally enforceable contract), (iv) grant to each End User (a) covered by a Subscription and (b) receiving the Self-managed Bundled Product in object code format, the right to use, in object code format, the Eligible Features and Functions of the Software applicable to the Subscription Level that OEM has purchased on such End User's premises or in the End User's public cloud account, solely as part of the Bundled Products and subject to the applicable End User License Agreement (which OEM shall ensure is agreed to by each End User so as to make it a legally enforceable contract), and (iv) prepare derivative works from the Documentation provided by Elastic to OEM, for the purpose of creating documentation for the Bundled Products. Use of the Software pursuant to the rights granted in clauses (iii) and (iv) shall not in the aggregate exceed the number (in total for all End Users and OEM) of Total Billable Nodes or Total Resource Units purchased under the Subscription. OEM's use of any Third Party Open Source Software is subject to the applicable open source license, which may set forth terms and conditions that are in addition to or different from those set forth in this Agreement, but which will not restrict the license rights granted to OEM hereunder, and which may contain additional rights.

2.3     Right to Transact Through OEM Resellers. OEM may (i) sublicense the right to distribute the Software as part of the Self-managed Bundled Products to its third party distributors and resellers (each, an "**OEM Reseller**"), and/or (ii) permit OEM Resellers to market and resell the SaaS Bundled Products, provided that: (i) any such OEM Reseller may only distribute the Bundled Products or sell the SaaS Bundled Products directly to End Users, (ii) OEM must cause the OEM Reseller to enter into a written executed agreement with OEM ("**Reseller Agreement**"), binding such OEM Reseller to terms and conditions regarding the Elastic products and services substantially similar to, and no less protective of Elastic's interests than, those in this Agreement, and (iii) OEM shall defend, indemnify and hold Elastic and its Affiliates harmless from any and all costs, losses, damages, liabilities and expenses (including reasonable attorney's fees and costs of litigation) resulting from OEM's failure to comply with this section and/or from an OEM Reseller's breach of a Reseller Agreement.

2.4     Subscriptions Purchased Through Elastic 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 Elastic Reseller), OEM may purchase Subscriptions under this Agreement through Elastic Resellers. Orders for Subscriptions purchased through an Elastic Reseller, including multi-year Subscriptions, are not subject to cancellation by OEM. Where OEM purchases a Subscription through an Elastic Reseller, the Elastic Reseller will enter into an Order Form with Elastic for the purchase of a Subscription that shows OEM as the "ship to" party and the Elastic Reseller as the "bill to" party, and such Elastic Reseller and OEM will enter into a separate agreement setting forth the fees to be paid by OEM to such Elastic 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 Elastic Reseller, it shall be responsible to OEM, pursuant to the terms and conditions of this Agreement, for providing the Subscriptions under any such Order Form. OEM hereby acknowledges that Elastic will not be responsible for the obligations of any Elastic Reseller to OEM under such separate agreement, for the acts or omissions of any Elastic Reseller, or for any third party products or services furnished to OEM by any Elastic Reseller. For the avoidance of doubt, Sections 4.2 and 4.3 below will be of no effect where OEM purchases a Subscription through an Elastic Reseller, as payment and taxes will be addressed in the agreement between such Elastic Reseller and OEM. As used herein, "**Elastic Reseller**" means a third party authorized by Elastic to promote and resell Subscriptions.

**2.5 Reservation of Rights and Restrictions.** OEM acknowledges that the Software is and shall remain the sole and exclusive property of Elastic. Elastic reserves all rights to the Software not expressly granted herein, and Elastic grants, and OEM receives, no rights in the Software by implication or otherwise, except those rights expressly granted herein. OEM agrees not to: (i) copy or use Software in any manner except as expressly permitted in this Agreement; (ii) except as expressly permitted herein, transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer Software to any third party; (iii) except in SaaS Bundled Products, use Software for providing time-sharing services, service bureau services or as part of an application services provider or as a service offering; (iv) alter or remove any notices in the Software (including, without limitation, any Third Party Open Source notices included in the Software); or (v) make available to any third party any analysis of the results of operation of Software, including benchmarking results, without the prior, written consent of Elastic. In addition, OEM shall not reverse engineer, decompile, disassemble or otherwise derive source code from Software, except to the extent OEM may be expressly permitted to do so under applicable law, it is essential to do so in order to achieve operability of Software with another software program, and OEM has first requested Elastic to provide the information necessary to achieve such operability with at least ninety (90) days advance written notice and Elastic has not made such information available. OEM acknowledges that any access to Elastic-Hosted Infrastructure is provided solely for the purpose of facilitating updates to the threat detection capabilities of endpoint security. OEM agrees not to access the Elastic-Hosted Infrastructure for any other reason including, without limitation, to (a) monitor the availability or performance of such Elastic-Hosted Infrastructure or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; or (b) interfere with or disrupt the integrity or performance of any Elastic-Hosted infrastructure.

**2.6 Elastic Trademarks.** During the term of this Agreement, OEM may use the Elastic Trademarks solely to identify the Software, identify itself as an authorized distributor of the Software, and promote the distribution of the Software as part of the Self-managed Bundled Products or inclusion of the Software in the SaaS Bundled Products. OEM 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 unmodified Software, OEM shall not remove, delete or in any manner alter the Elastic Trademarks or other intellectual property rights notices of Elastic and Elastic's suppliers, if any, appearing on the Software as delivered to OEM. OEM 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 OEM, its Affiliates, or its or their agents or End Users, 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 OEM'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 OEM shall obtain no rights with respect to any of the Elastic Trademarks, other than the right set forth in this section. OEM 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 OEM 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.

**2.7 Branding.** OEM may distribute the Software under OEM's brand, but solely as part of the Bundled Products. Notwithstanding the foregoing, OEM agrees to include in the Bundled Products the phrase "Powered by Elastic" or a similar, mutually agreed upon attribution that acknowledges the use of Software in the Bundled Products, and to state in all marketing, advertising, and packaging materials that Software contains the technology of Elastic.

**2.8 Marketing Materials; OEM Identification.** OEM may include Elastic technical and marketing information provided by Elastic to OEM in marketing materials regarding the Self-managed Bundled Products and the SaaS Bundled Products and in its general marketing information, quotes, sales and technical materials provided to OEM Resellers and End Users during the term of this Agreement.

**2.9 Feedback.** OEM, OEM's Affiliates, End Users, and their respective agents, may volunteer feedback to Elastic, and/or its Affiliates, about the Software and/or Support Services ("Feedback"). Elastic and its Affiliates shall be irrevocably entitled to use that Feedback, for any purpose and without any duty to account, provided that, in doing so, they may not breach their obligations of confidentiality under Section 7 of this Agreement.

### 3 SUPPORT SERVICES

**3.1 Development Support.** In consideration of the payment by OEM to Elastic of the applicable Fees, Elastic will provide Support Services to OEM for OEM's development use of the Software in accordance with the Support Services Policy.

**3.2 Production Support Services.** OEM shall provide Level 1 Support and Level 2 Support directly to End Users, and Elastic will have no obligation to provide Support Services directly to End Users. During an applicable Subscription Term, Elastic will provide OEM with Level 3 Support in accordance with the Support Services Policy for the applicable Self-managed Bundled Product and/or SaaS Bundled Products, up to the applicable number of Total Billable Nodes or Total Resource Units included in the Subscription and at the applicable Subscription Level.

Support Services will be delivered to OEM remotely, electronically, through the Internet, and when applicable, depending on the Subscription Level purchased, via telephone. For the avoidance of doubt, Support Services are not delivered in person at OEM's or End Users' facilities.

**3.3 Restrictions.** Support Services are provided to OEM solely for OEM's internal use (which includes use by OEM Affiliates) in connection with developing and providing the Self-managed Bundled Product and/or SaaS Bundled Products and/or for the benefit of End Users and solely for such End Users' internal use, and are subject to applicable quantitative limitations on (i) the number of Total Billable Nodes or Total Resource Units, as applicable, and (ii) the number of support contacts in the Support Services Policy. In addition, OEM agrees to not:

(a) use the Support Services to supply any consulting, support or training services regarding the Software to any third party other than End Users; or

(b) use Support Services to obtain support (i) for its use of Software for which no Subscription has been purchased or (ii) under a higher Subscription Level for its use of Software for which OEM has purchased a lower Subscription Level.

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

## 4 REPORTS, PAYMENTS, TAXES AND RECORDS

4.1 **Quarterly Reports.** Within fifteen (15) days following the end of each calendar quarter, OEM shall provide to Elastic a written report ("OEM Quarterly Report"), that sets forth (i) the number of Total Billable Nodes or Total Resource Units deployed under each applicable Subscription on the last day of such calendar quarter, (ii) the names and addresses of End Users that have licensed the Self-managed Bundled Products or purchased the SaaS Bundled Products from OEM in the preceding calendar quarter, the number of End User Billable Nodes and/or End User Resource Units associated with each End User, the applicable Subscription Term (where such End User Billable Nodes and/or End User Resource Units are covered by a Subscription), and/or the date on which such End User Billable Nodes and/or End User Resource Units were first deployed to the End User (where such End User Billable Nodes and/or End User Resource Units are not covered by a Subscription), and (iii) the total Fees owing to Elastic thereon.

### 4.2 Fee Invoices and Payments.

4.2.1 **Invoicing.** Elastic will invoice OEM for Fees for the initial order promptly after the Effective Date and on or about each anniversary thereafter for subsequent year commitments.

4.2.2 **Additions; Fees.** If an OEM Quarterly Report indicates that the number of End User Billable Nodes and/or End User Resource Units deployed to all End Users or in connection with the SaaS Bundled Products under a Subscription exceeds the number of End User Billable Nodes and/or End User Resource Units purchased under the applicable Subscription, then OEM shall include payment of the Fees payable with respect to such excess with such OEM Quarterly Report or (if applicable) shall cause its Elastic Reseller to pay such Fees concurrently with or promptly after delivery of the OEM Quarterly Report. The Subscription Term for such excess End User Billable Nodes and/or End User Resource Units shall be at least one year and shall begin on the first day of the calendar quarter in which they are first deployed to the End User. OEM may also add End User Billable Nodes and/or End User Resource Units to a Subscription by executing one or more additional (i) Order Forms setting forth the details of such addition, and referencing the Order Form under which the Subscription was initially purchased or (ii) issuance by OEM of a Qualifying PO, which will be deemed to constitute, for the purposes of this Agreement, the execution by OEM of the referenced Order Form. Upon execution of such an Order Form by the parties, the additions will be deemed added to the applicable Subscription for the remainder of the applicable Subscription Term, or, if so indicated on the Order Form, a new Subscription and Subscription Term may be initiated that includes the addition, and OEM will be provided with a credit for the unused portion of the existing Subscription.

4.2.3 **General.** All Fees will be paid in the currency set forth on the Order Form, are non-refundable, and payment will be made without right of set-off or chargeback. OEM will pay all invoices within thirty (30) days of receipt. OEM shall pay all amounts due under this Agreement to Elastic at the address set forth herein or such other location as Elastic designates in writing. Except as otherwise expressly provided in this Agreement, any and all payments made by OEM 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.

4.3 **Taxes.** All Fees payable hereunder are exclusive of all applicable sales, use, value-added, and excise taxes, which shall be the responsibility of OEM; provided, however, that OEM shall have no liability for any net income, net worth or franchise taxes assessed on Elastic by the United States or any state thereof. If, as a result of any tax or levy, OEM is required to withhold any amount on any payment to Elastic, then the amount of the payment to Elastic shall be automatically increased to totally offset such tax, so that the amount actually remitted to Elastic, net of all taxes, equals the amount invoiced or otherwise due. OEM may provide Elastic with a certificate of exemption acceptable to an applicable taxing authority.

4.4 **Records and Audits.** OEM shall maintain complete and accurate accounting records, in accordance with sound accounting practices, to support and document amounts payable to Elastic hereunder. Such records shall be retained for a period of at least two (2) years after the date payments that relate to such records have been

paid. OEM shall, upon written request from Elastic, provide access to such records to an independent auditor chosen by Elastic for the purpose of conducting an audit to confirm amounts paid under this Section 4. If any such audit discloses a shortfall in payment to Elastic, OEM shall promptly pay any such shortfall, and if such shortfall is more than five percent (5%) of the amount paid during the period being audited, OEM agrees to promptly reimburse Elastic for the reasonable cost of the audit.

## 5 OEM OBLIGATIONS

5.1 **Marketing of Bundled Products; Non-Transferability of End User Billable Nodes and End User Resource Units.** OEM agrees to use diligent, good faith efforts to market and sell the Self-managed Bundled Products and/or the SaaS Bundled Products in the Territory and to maximize sales of the same. Without limiting the foregoing, OEM agrees that it shall not sell, license or distribute any version of the OEM Product without the Software (i.e., OEM Products may be sold and distributed only as Self-managed Bundled Products or sold as SaaS Bundled Products). In addition, End User Billable Nodes and/or End User Resource Units allocated to a particular End User may not be shared with or transferred to another End User (e.g., if the initial End User terminates its relationship).

5.2 **No Unauthorized Warranties.** OEM shall make no representations or warranties with respect to the Software or the Support Services beyond those contained herein. OEM shall be solely responsible for, and Elastic shall have no legal obligation to honor, any warranties that OEM or any OEM distributor or OEM Reseller provides to End Users to the extent that such warranties are broader or greater in scope than those made by Elastic to OEM hereunder. OEM 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 OEM's failure to comply with this section.

5.3 **End User Support By OEM.** OEM will provide Level 1 Support and Level 2 Support directly to End Users of the Software in the Self-managed Bundled Products and End Users of the SaaS Bundled Products. OEM's technical support personnel shall include two (2) persons certified on the Software, in accordance with such reasonable requirements as Elastic may establish from time to time. Certification will be at OEM's expense and at Elastic's published rates.

## 6 REPRESENTATIONS AND WARRANTIES; DISCLAIMER

6.1 **OEM Warranties.** OEM represents and warrants that: (i) OEM has the unrestricted right and authority to enter into and perform this Agreement, (ii) no consent of any other person or entity is needed to market, sell, and distribute the OEM Products, in combination with the Software, as contemplated hereunder, and (iii) its combination of the Software and the OEM Products in the Self-managed Bundled Products or SaaS Bundled Products does not and will not violate any applicable laws.

6.2 **Elastic Support Warranty.** Elastic warrants that it will perform the Support Services 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 OEM's exclusive remedy, shall be for Elastic to re-perform the Support Services.

6.3 **Limited Performance Warranty.** Elastic warrants that during the term of the applicable Subscription Term, the Software, in the form provided by Elastic under the applicable Subscription, will perform in all material respects in accordance with the Documentation. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and OEM's exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Software to perform in all material respects in accordance with the Documentation or (ii) if Elastic is unable to provide such a correction within thirty (30) days of receipt of notice of the applicable non-conformity, then upon request from OEM, Elastic will promptly refund to OEM the unused portion (on a pro-rata basis based on the number of months remaining in the then current term of Agreement) any pre-paid Fees paid by OEM to Elastic for the applicable Software, provided that, upon payment of such refund, all licenses granted in Sections 2.1 and 2.2 and Elastic's obligation to provide Support Services with respect to

such Software shall immediately terminate. The warranty set forth in this section does not apply if the applicable Software or any portion thereof: (a) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the Documentation; (b) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (c) is used on equipment, products, or systems not meeting specifications identified by Elastic in the Documentation. Additionally, the warranties set forth herein only apply when notice of a warranty claim is provided to Elastic within the applicable warranty period specified herein and do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Elastic.

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

6.5 **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6, THE SOFTWARE AND SUPPORT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND ELASTIC AND ITS LICENSORS MAKE NO WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE, THE DOCUMENTATION, THE SUPPORT SERVICES OR ANY OTHER MATERIALS OR SERVICES FURNISHED OR PROVIDED TO OEM 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 SOFTWARE, THE DOCUMENTATION, THE SUPPORT SERVICES AND ANY OTHER SERVICES OR OTHER MATERIALS PROVIDED BY ELASTIC HEREUNDER, AND WITH RESPECT TO THE USE OF THE FOREGOING. FURTHER, ELASTIC DOES NOT WARRANT RESULTS OF USE OR THAT SOFTWARE WILL BE ERROR FREE, THAT ALL ERRORS WILL BE CORRECTED OR THAT THE USE OF SOFTWARE WILL BE UNINTERRUPTED. OEM UNDERSTANDS AND AGREES THAT THE SOFTWARE AND SUPPORT SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO OEM UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

## 7 CONFIDENTIAL INFORMATION

7.1 **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 OEM's business and marketing strategies, including but not limited to employee and customer lists, customer profiles, project plans, design documents, product strategies and pricing data, research, advertising plans, leads and sources of supply, development activities, design and coding, interfaces with the Software, anything provided by either party to the other in connection with the 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.

7.2 **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 Affiliates 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.

7.3 **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.

7.4 **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.

7.5 **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.

## 8 INDEMNIFICATION

### 8.1 **Elastic Indemnifications.**

8.1.1 **Infringement Claims.** Elastic will, at its expense defend or settle any Infringement Claim and will indemnify OEM 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 OEM or imposes on OEM any obligation other than the obligation to cease using the Software or Support Services that are subject to the Infringement Claim, unless OEM has first consented in writing to the applicable terms of such settlement agreement that are in conflict with the foregoing limitations.

8.1.2 **Exclusions.** Elastic will have no obligation to OEM to the extent any Infringement Claim or resulting award is based upon or results from: (i) OEM's distribution or use of the Software in a country that is not a contracting state to the Patent Cooperation Treaty; (ii) the failure of OEM to use and/or distribute, within thirty (30) days of OEM's receipt of notice from Elastic regarding the availability of such an update and that such update addresses an infringement issue, an update of the Software made available by Elastic that would have avoided the Infringement Claim; (iii) a modification of the Software that is not performed by Elastic; (iv) the combination, operation, or use of the Software with any other products, services or equipment not provided by Elastic where there would be no Infringement Claims but for such combination; (v) specifications OEM provides to Elastic; (vi) use or distribution of the Software other than in accordance with the terms and conditions of this Agreement, or (vii) any Third Party Open Source Software.

8.1.3 **Certain Remedies.** If, during the term of this Agreement, the Software is, or in Elastic's reasonable opinion is 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 OEM to continue to exercise the rights granted in Section 2.2 above; (ii) modify the Software so that it becomes non-infringing but substantially functionally equivalent; or (iii) in the event that neither (i) or (ii) are commercially reasonable options, at OEM's written request, terminate all affected Subscriptions and promptly refund to OEM the unused portion (on a pro-rata basis based on the number of months remaining in the current period of the affected Subscription for which OEM has prepaid Fees) of any pre-paid Fees paid by OEM to Elastic for such terminated Subscriptions.

8.1.4 **Limitation.** THE PROVISIONS OF THIS SECTION 8.1 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC AND THE EXCLUSIVE REMEDY OF OEM, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT, OR MISAPPROPRIATION OF ANY TRADE SECRET, BY THE SOFTWARE, THE SUPPORT SERVICES OR ANY OTHER SERVICES OR MATERIALS PROVIDED TO OEM HEREUNDER.

#### 8.2 Indemnification by OEM.

8.2.1 **Intellectual Property Indemnification.** OEM agrees to defend and indemnify Elastic, at OEM's expense, against any legal action brought against Elastic by a third party to the extent that it is based on a claim that the Self-managed Bundled Products or SaaS Bundled Products, in whole or in part, or any software, hardware, materials or technology therein (except for Software), or the combination of the Software with any other software, hardware, materials or technology used by OEM as part of the applicable Self-managed Bundled Product or SaaS Bundled Products, infringes a patent, copyright or trademark of such third party or makes unlawful use of such party's trade secret, and OEM shall pay any settlement of such claim or final judgment against Elastic in any such action if attributable to any such claim. However, such defense and payments are subject to the conditions that Elastic must: (i) notify OEM promptly in writing of such claim, (ii) permit OEM to have sole control of the defense, compromise or settlement of such claim, including any appeals, and (iii) fully cooperate with OEM, at OEM's expense, in the defense or settlement of such claim.

8.2.2 **General Indemnifications.** OEM shall defend, indemnify and hold Elastic and its affiliated companies harmless from any and all costs, liabilities, damages and expenses (including reasonable attorneys' fees and costs of litigation) arising out of or resulting from any third party claim that results from or is related to (i) OEM's breach or violation of applicable laws or regulations or (ii) any OEM Product or SaaS Bundled Products (except the Software).

8.2.3 **Settlement of Claims.** OEM 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.

8.2.4 **Conditions.** The obligations of an indemnifying party in this Section 8 are conditioned upon the indemnified party (i) notifying the indemnifying party promptly in writing of any threatened or pending claim for which the indemnifying party has an indemnification obligation, provided that failure to provide such notice will only relieve the indemnifying party of its obligations under this Section 8 to the extent its ability to defend or settle an applicable claim is materially 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 applicable claim and (iii) tendering to the indemnifying party sole control over the defense and settlement of the applicable claim. The indemnified party's counsel will have the right to participate in the defense of the applicable claim, at the indemnified party's own expense; provided, however, that in connection with such participation, the indemnified party will not, without the prior written consent of the indemnifying party, make any prejudicial statement,

settle, compromise or consent to the entry of any judgment with respect to any pending or threatened applicable claim.

## 9 LIMITATION OF LIABILITY

9.1 **Disclaimer of Certain Damages.** IN NO EVENT SHALL OEM 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.

9.2 **Damages Cap.** EXCEPT WITH RESPECT TO (I) A PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 7; (II) ELASTIC'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.1.1, (III) OEM'S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 2.3, 5.2, AND 8.2; (IV) AMOUNTS PAYABLE BY OEM UNDER SECTION 4 OF THIS AGREEMENT AND EACH ORDER FORM; AND (V) OEM'S VIOLATIONS OF THE USE AND DISTRIBUTION RESTRICTIONS SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL OEM'S OR ELASTIC'S AGGREGATE, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID OR PAYABLE BY OEM TO ELASTIC UNDER THIS AGREEMENT FOR THE AFFECTED SOFTWARE AND/OR SUPPORT SERVICES DELIVERED AND/OR MADE AVAILABLE TO OEM FOR THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

9.3 **Basis of the Bargain.** OEM AGREES THAT THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE A REASONABLE ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## 10 TERM AND TERMINATION

10.1 **Subscription Term.** Unless otherwise specified herein, the initial Subscription Term for each Subscription will commence upon the start date set forth on the applicable Order Form, 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 10.4.1 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 Subscription Term. The initial Subscription Term, plus any subsequent renewal Subscription Term shall be the "**Subscription Term**".

10.2 **Agreement Term.** This Agreement will commence on the Effective Date and, unless earlier terminated in accordance with Section 10.3 or Section 10.4.2 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.

10.3 **Payment Breach.** Except as otherwise provided herein, Elastic may terminate this Agreement prior to its expiration in the event OEM fails to cure any breach for failure to timely pay undisputed amounts owed to Elastic within ten (10) days after written notice from Elastic demanding such payment.

#### 10.4 Termination.

10.4.1 **Subscriptions.** Each party may terminate a Subscription and all associated Order Forms, upon giving notice in writing to the other party if the non-terminating party commits a material breach of this

Agreement 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 and the associated Order Forms, the rights and obligations of the parties will, subject to Section 10.7 below, cease, provided that termination of a Subscription and associated Order Forms under this subsection will not result in termination of any other Subscription and their respective Order Forms.

**10.4.2 Agreement. Non-US Government OEMs:** 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. In addition, either party may terminate this Agreement at any time if (i) a receiver is appointed for the other party or its property, (ii) the other party makes an assignment for the benefit of its creditors, (iii) proceedings are commenced by or for the other party under any bankruptcy, insolvency, or debtor's relief law (and not dismissed within 120 days), (iv) the other party liquidates or dissolves or attempts to do so, or (v) the other party assigns or purports to assign this Agreement in breach of its provisions. For the avoidance of doubt, termination of this Agreement under the foregoing provisions 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 or release OEM from its reporting or payment obligations under Section 4 for the quarter in which such termination occurs. **U.S. Government OEMs:** 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.

**10.5 Obligations on Termination.** Upon termination of this Agreement for any reason: (i) OEM 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) OEM shall immediately cease to identify itself as an authorized distributor for Elastic or otherwise affiliated in any manner with Elastic; and (iii) the license granted to OEM under Section 2.2 shall immediately terminate. Notwithstanding any expiration of this Agreement, its terms will continue to apply to, and OEM may continue to exercise the rights granted to it under Section 2.2 solely with respect to, any Subscription that has not been terminated or for which the Subscription Term has not expired.

**10.6 No Liability for Termination.** To the greatest extent permitted by applicable law, in the event of termination of this Agreement by either party in accordance with any of the provisions of this Agreement, neither party shall be liable to the other, because of such termination, for compensation, reimbursement or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases or commitments in connection with the business or goodwill of Elastic or OEM. Termination shall not, however, relieve either party of obligations incurred prior to the termination of this Agreement.

**10.7 Survival.** All payment obligations under Section 4, plus Sections 2.6, 2.9, 4.3, 4.4, 6, 7, 8, 9, 10.5, 10.6, 10.7 and 11 of this Agreement shall survive any termination or expiration of this Agreement.

## 11 MISCELLANEOUS

**11.1 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 a participation agreement, executed by the applicable parties, which incorporates the terms and conditions of this Agreement, as amended by the terms of the participation agreement. Accordingly, where Affiliates of the parties conduct business hereunder, references to OEM herein shall include any applicable OEM 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.

**11.2 Anti-Corruption.** The parties acknowledge 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 ("FCPA") and the U.K. Bribery Act. Without limiting the foregoing, and in conformity with the FCPA and with Elastic's established corporate policies regarding foreign business practices, none of OEM, Elastic, or its and their respective employees and agents shall directly or indirectly make any offer, payment, or promise to pay; authorize payment; offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing any act or decision of an official of any government within the Territory or the United States Government (including a decision not to act) or inducing such a person to use his or her influence to affect any such governmental act or decision in order to assist OEM or Elastic in obtaining, retaining or directing any such business.

**11.3 Assignment. Non-U.S. Government OEMs:** 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 assignor under this Agreement or (ii) 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. **U.S. Government OEMs:** 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).

**11.4 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 forgoing, for U.S. Government OEMs, 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.

**11.5 Export Control.** OEM acknowledges that the Software, Support Services, and technologies related thereto are subject to U.S. export control laws and regulations, including but not limited to the International Traffic In Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130 (2010)); 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, and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended. OEM 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 software or technology to any person contrary to such laws or regulations. OEM acknowledges that remote access to Software may in certain circumstances be considered a re-export of Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

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

**11.7 Future Features and Functions.** OEM 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, OEM 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.

11.8 Governing Law; Jurisdiction and Venue.

(a) **Non-US Government OEMs in California.** If OEM is located in California (as determined by the OEM address specified below the signatures on this Agreement), 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 OEMs:** No matter where located, for all U.S. Government OEMs this Agreement shall be governed by the Federal law of contracts.

(b) **Non-US Government OEMs Outside of California.** If OEM is located anywhere other than California (as determined by the OEM address specified below the signatures on this Agreement), this Agreement will be governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the District of Delaware, or if that court lacks subject matter jurisdiction, in any Delaware State Court located in Wilmington, Delaware.

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

(d) **Equitable Relief.** A breach or threatened breach, by either party of Section 7 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 forgoing, the parties acknowledge that with respect to non-U.S. Government OEMs equitable remedies may not be available unless, and to the extent, expressly provided in Federal statute and regulations.

11.9 Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding to the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

11.10 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.

11.11 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 below the signatures on this Agreement. E-mail notices sent to Elastic should 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.

11.12 OEM Identification. OEM agrees that Elastic may identify OEM as a user or distributor of the Software on its website, through a press release issued by Elastic, and in other promotional materials.

11.13 Product Metadata. The Software may provide Product Metadata (defined below) to Elastic. Product Metadata does not include any OEM or End User personal data or any content that OEM or End Users process or store in the Software in connection with use by OEM or End Users of the Software. In addition, OEM may disable Product Metadata in the Software at any time. 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 OEM's or End Users' configuration and use of the Software, such as type and version, operating systems and environment, cluster statistics (e.g., node type and counts), performance (e.g., uptime and response times and/or endpoint sensor detection events) and feature usage.

11.14 Relationship of the Parties. The relationship of Elastic and OEM established by this Agreement is that of independent contractors. This Agreement does not give either party the power to direct and control the day to day activities of the other, constitute the parties as partners, joint venturers, co-owners, principal-agent, or otherwise participants in a joint or common undertaking, or allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

11.15 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.

11.16 Entire Agreement. This Agreement, together with any Exhibits attached hereto and any Order Forms executed by the parties, each of which is hereby incorporated herein by this reference, along with any valid amendments hereto, 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), (ii) this Agreement, and (iii) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if OEM issues any purchase orders or similar documents in connection with this Agreement, it shall do so only for the purpose of Section 4.2.2(ii) or 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 OEM's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (i) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (ii) an amendment of this Agreement, nor (iii) an agreement to amend this Agreement. This Agreement shall not be modified except by a subsequently dated, written amendment that expressly amends this Agreement and which is signed on behalf of Elastic and OEM 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.

**EXHIBIT A**  
**End User License Agreement**

This Exhibit A to the Elastic OEM License and Support Agreement (the "Agreement") sets forth the minimum terms to be included in the End User License Agreement. Capitalized terms not defined in this Exhibit A shall have the meaning set forth in the Agreement.

Minimum End User License Terms for End Users of the Self-managed Bundled Products:

1. That Software is licensed, not sold, as an embedded portion of the Self-managed Bundled Product, and is not licensed on a stand-alone basis;
2. That title to the Software does not pass to the End User, and OEM and its licensors own and retain all intellectual property rights in the Software except those rights expressly granted by OEM under the End User License Agreement;
3. End User shall look solely to OEM to satisfy any obligations under the End User License Agreement;
4. No direct warranties from Elastic to or for the benefit of the End User;
5. That each license granted to an End User that receives the Self-managed Bundled Product in object code form shall be a non-exclusive license to use, in object code form, the Eligible Features and Functions of the Software in the Self-managed Bundled Product for the duration of the applicable Subscription Term and for the number of End User Billable Nodes or End User Resource Units allocated to that End User;
6. Restrictions on End User's license to the Software as set forth under Restrictions set forth below; and
7. An export control notice similar to Section 11.6 (Export Control) in this Agreement (other than the last sentence of Section 11.6).

Restrictions for End Users of the Self-managed Bundled Products:

End User agrees not to:

- (i) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software 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 the Software on more End User Billable Nodes or End User Resource Units than the respective number of End User Billable Nodes or End User Resource Units allocated to that End User;
- (iii) prepare derivative works from, modify, copy or use the Software in any manner except as expressly permitted in the End User License Agreement;
- (iv) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software in whole or in part to any third party;
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- (viii) (a) access or use any Elastic-hosted infrastructure or related data, systems, or networks (collectively, "Elastic-Hosted Infrastructure") that interface with the Software 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.

Minimum End User License Terms for End Users of the SaaS Bundled Products:

- a) End User shall look solely to OEM to satisfy any obligations under the End User License Agreement; and
- b) End User shall comply with all laws applicable to its use of the SaaS Bundled Products as a Service Offering, including data privacy laws and U.S. export control and sanctions laws.

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End User agrees not to:

- I. sell, resell, rent, lease, offer any time-sharing arrangement, service bureau or any service based upon, the SaaS Bundled Products as a Service Offering;
- II. access or use the SaaS Bundled Products as a Service Offering to compete against Elastic; or
- III. make available to any third party any analysis of the results of operation (including benchmarking results) of the Software, as accessed via the SaaS Bundled Products as a Service Offering.