



ELASTIC OEM LICENSE AND SUPPORT AGREEMENT

NOT FOR EDITING OR NEGOTIATION.

Effective Date: 10 MAY 2024

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 in such Order Form ("**Effective Date**").

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, excluding: (i) for Software deployed on Elastic Cloud for Kubernetes, any Software branded under the names Beats and Elastic Agent; and (ii) for Software not deployed on Elastic Cloud for Kubernetes, any Software branded under the names Beats, Elastic Agent, Logstash, Endgame Agent and Elastic Endpoint agent.

1.4 **"Bundled Product"** means Software bundled with an OEM Product and made available to End Users either as a SaaS Bundled Product or Self-managed Bundled Product.

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

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 Platinum Software 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 an Enterprise 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 Product”** means a product offering by OEM as expressly set forth on Exhibit A that is based on the features and functions of a 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 a Bundled Product that is distributed to End Users for use on each End User’s premises or in the End User’s public cloud account.

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

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

2 APPOINTMENT AND LICENSE GRANTS

2.1 **Appointment.** Subject to the terms and conditions of this 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 Self-managed 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 Self-managed 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.

2.3 **Separately Licensed Components.** Some Software components are governed by an open source-type license (“**Component License**”) that obliges Elastic to provide the component only under the Component License. All such components, Component Licenses and source code that must be provided, are currently made available with the Software/Documentation and/or at <https://www.elastic.co/third-party-dependencies>. Any restrictions in this Agreement conflicting with a Component License do not apply to the affected component.

2.4 **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 Self-managed 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.

2.5 **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 references this Agreement and 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.

2.6 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 notices for Components 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.

2.7 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.

2.8 Branding. OEM may distribute or market 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.

2.9 Marketing Materials: OEM Identification. OEM may include Elastic technical and marketing information provided by Elastic to OEM in marketing materials regarding the 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.

2.10 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:

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

3.3.2 use Support Services (i) other than for support of the Software or (ii) to obtain support 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.

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. Non-payment by End Users or OEM Resellers will not relieve OEM of its obligation to pay the amounts set forth on the applicable invoice.

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 at no additional cost to OEM.

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.

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

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 included in the 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 earlier terminated in accordance with Section 10.4.1 below, each Subscription will commence and expire in accordance with the first start date and last end date set forth on the applicable Order Form (the entire duration of such Order Form and the term of any renewal thereof, each, a separate "**Subscription Term**"). Each Subscription shall automatically renew for a new Subscription Term of one (1) year (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.

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.** 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.

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, 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. 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.

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.

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

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. 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. **“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. OEM will not (i) access or use the Elastic-hosted infrastructure (“**Elastic-Hosted Infrastructure**”) that stores and processes the Product Metadata for the purposes of monitoring its availability or performance or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; or (ii) interfere with or disrupt the integrity or performance of any Elastic-Hosted infrastructure.

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) Attachment 1 (Country-Specific Provisions); (iii) this Agreement, and (iv) 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 11.5 (Export Control) in this Agreement (other than the last sentence of Section 11.5).

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;
- (v) use the Software for providing time-sharing services, any software-as-a-service offering ("SaaS"), service bureau services or as part of an application services provider or other service offering;
- (vi) alter or remove any marks and notices in the Software;
- (vii) make available to any third party any analysis of the results of operation of the Software, including benchmarking results; or
- (viii) 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.

Restrictions for End Users of the SaaS Bundled Products:

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.

ATTACHMENT 1

COUNTRY-SPECIFIC PROVISION

1 AUSTRALIA

1.1 The following is added to the end of Section 4.3 of the Agreement: If for any reason a supply made by Elastic under or in connection with this agreement is a Taxable Supply for GST purposes, then at or before the time the consideration for the supply is payable, OEM must pay Elastic an amount equal to the GST for the supply (in addition to the consideration otherwise payable under this agreement for that supply), and Elastic must give OEM a Tax Invoice for the supply. For the purpose of this Section 4.3, GST means the goods and service tax under the Good and Services Tax Act 1999 (Cth) and capitalised terms have the meaning given in that Act.

1.2 Existing Section 6.5 of the Agreement is moved to Section 6.6 and a new Section 6.5 of the Agreement is added to the Agreement as follows: Despite anything in this Agreement, Elastic's goods come with guarantees that cannot be excluded under the Australian Consumer Law (as set out in the Competition and Consumer Act 2010 (Cth) ("ACCA")) if OEM is deemed a 'Consumer' under ACCA then Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Furthermore, OEM will also be entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

1.3 A new sentence is added at the beginning of Section 6.6 is of the Agreement as follows: NOTHING IN THIS AGREEMENT IS INTENDED TO LIMIT OEM'S NON-EXCLUDABLE RIGHTS UNDER THE COMPETITION AND CONSUMER ACT 2010 (CTH).

1.4 A new Section 9.4 is added to the Agreement as follows: NOTHING IN THIS AGREEMENT SHALL OPERATE OR HAVE EFFECT SO AS TO LIMIT OR EXCLUDE THE LIABILITY OF A PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FOR FRAUD INCLUDING FRAUDULENT MISREPRESENTATION OR FOR ANY LIABILITY THAT MAY NOT BE LAWFULLY EXCLUDED UNDER APPLICABLE LAW.

1.5 A new Section 9.5 is added to the Agreement as follows: Australian Consumer Law. IF THE COMPETITION AND CONSUMER ACT 2010 (CTH) OR ANY OTHER LEGISLATION STATES THAT THERE IS A GUARANTEE IN RELATION TO ANY GOOD OR SERVICE SUPPLIED BY ELASTIC IN CONNECTION WITH THIS AGREEMENT, AND ELASTIC'S LIABILITY FOR FAILING TO COMPLY WITH THAT GUARANTEE CANNOT BE EXCLUDED BUT MAY BE LIMITED, SECTIONS 9.1, 9.2 AND 9.4 DO NOT APPLY TO THAT LIABILITY. INSTEAD, ELASTIC'S LIABILITY FOR THAT FAILURE IS LIMITED TO (AT THE ELECTION OF ELASTIC), IN THE CASE OF A SUPPLY OF GOODS, ELASTIC REPLACING THE GOODS OR SUPPLYING EQUIVALENT GOODS OR REPAIRING THE GOODS, OR IN THE CASE OF A SUPPLY OF SERVICES, ELASTIC SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

1.6 Section 11.4 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.

1.7 Governing Law; Jurisdiction and Venue. This Agreement will be governed by and construed in accordance with the laws of the New South Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and courts competent to hear appeals from those courts. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. A breach or threatened breach, by either party of Section 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.

2 CANADA

2.1 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of laws principles, and the parties agree to the exclusive jurisdiction of the courts of the Province of Ontario. The parties acknowledge that this Agreement shall not be governed by the 1980 UN Convention on Contracts for the

International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable court set forth above, based upon any alleged lack of personal jurisdiction, improper venue, forum non conveniens, or any similar claim or defense. The parties further acknowledge that a breach, or threatened breach, by either party of Section 7 may cause irreparable harm for which the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.

2.2 Section 11.9 of the Agreement is hereby deleted in its entirety and replaced with the following: Language. Any translation of this Agreement is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this Agreement shall govern. At the request of the parties, the official language of this Agreement and all communications and documents relating hereto is the English language, and the English-language version shall govern all interpretation of the Agreement. *A la demande des parties, lan langue officielle de la presente convention ainsi que toutes communications et tous documents sy rapportant est la langue anglaise, et la version anglaise est celle que regit toute interpretation de la presente convention.*

3 FRANCE

3.1 Section 2.9 of the Agreement is hereby deleted in its entirety and replaced with the following: Feedback. Subject to its obligations under Section 7 of this Agreement (Confidential Information), Elastic will be irrevocably free to use without restriction of any kind for any purpose, all suggestions, ideas and/or feedback (collectively, "Feedback") provided to Elastic by OEM, or its Affiliates and their respective employees, contractors or other agents, with respect to the Software and/or Support Services. The foregoing grant of rights is made without any duty to account to any of the foregoing persons or entities for the use of such Feedback.

3.2 A new Section 2.11 is hereby added to the Agreement as follows: General. OEM has had the opportunity to assess whether Elastic's off-the-shelf Software and Support Services meet its business needs including by review of the Support Services Policy made available by Elastic. Elastic acknowledges that in pre-contract discussions, if any, it was obliged to inform OEM about the capabilities of its off-the-shelf Software and Support Services relative to OEM's expressed needs. Subject to OEM communicating to Elastic accurate and up to date information, Elastic shall (i) inform, advise and warn OEM in relation to OEM's use of the Software and Support Services relative to those needs; and (ii) suggest Elastic solutions that may be better suited to those needs where it is reasonably appropriate to do so, (for example, volumes, IT architecture configurations and time constraints). Each party shall comply with all laws applicable to its performance of the Agreement and cooperate with the other in good faith in such performance.

3.3 The first sentence of Section 4.2.3 of the Agreement is hereby deleted in its entirety and replaced with the following: All Fees will be paid in the currency set forth on the Order Form, and are non-refundable.

3.4 The first sentence of Section 4.3 of the Agreement is hereby deleted in its entirety and replaced with the following: All Fees payable hereunder are exclusive of all applicable value-added 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.

3.5 The second sentence of Section 6.2 of the Agreement is hereby deleted in its entirety and replaced with the following: In the event of a breach of the foregoing warranty, (i) Elastic shall have the right to re-perform the applicable Support Services at no additional cost to OEM or (ii) if Elastic is unable to re-perform the non-compliant Support Services in accordance with the foregoing warranty, within thirty (30) days of receipt of notice of the applicable non-conformity, OEM may elect to terminate the associated Subscription, and Elastic will promptly refund to OEM any pre-paid, unused fees paid by OEM to Elastic for

such Subscription, without prejudice to OEM's other rights and remedies under French law subject to the provisions of this Agreement.

3.6 The second sentence of Section 6.3 (Limited Performance Warranty) of the Agreement is hereby deleted in its entirety and replaced with the following: 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, OEM may elect to terminate the associated Subscription, and Elastic will promptly refund to OEM any pre-paid, unused fees paid by OEM to Elastic for such Subscription, without prejudice to OEM's other rights and remedies under French law subject to the provisions of this Agreement.

3.7 Section 8.1.2(vii) of the Agreement is hereby deleted in its entirety and replaced with the following: (vii) any third party open source software included in the Software except to the extent that any Infringement Claim results from Elastic's failure to comply with the license agreement(s) applicable to such third party open source software.

3.8 Section 9.1 of the Agreement is hereby deleted in its entirety and replaced with the following: Disclaimer of Certain Damages. SUBJECT TO SECTION 9.3 BELOW AND PURSUANT TO SECTIONS 1188 AND 1231-3 OF THE FRENCH CIVIL CODE, THE PARTIES AGREE THAT, EXCEPT FOR A PARTY'S GROSS NEGLIGENCE ("FAUTE LORDE") OR WILLFUL MISCONDUCT ("DOL"), IN NO EVENT SHALL OEM OR ELASTIC OR THEIR RESPECTIVE LICENSORS BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR FOR ANY INDIRECT DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT..

3.9 Section 9.3 of the Agreement is hereby deleted in its entirety and replaced with the following: Basis of the Bargain. THE ALLOCATIONS OF LIABILITY IN THIS SECTION REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF ELASTIC FOR THE SOFTWARE AND SUPPORT SERVICES PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS.

3.10 The first sentence of Section 10.4.1 (Subscriptions) of the Agreement is hereby deleted in its entirety and replaced with the following: Each party may terminate the Subscription, ipso jure and without having to file a claim, 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.

3.11 Section 11.4 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.

3.12 The word "acknowledges" is replaced with "is informed" in Section 11.5 (Export Control) of the Agreement.

3.13 Section 11.6 of the Agreement is hereby deleted in its entirety and replaced with the following: Force Majeure. Neither party will be liable for, or be considered to be in breach of, or in default under, this Agreement, as a result of any event of Force Majeure as defined under Article 1218 of the French Civil Code. OEM expressly agrees that it shall not be relieved from its payment obligations by any act of Force Majeure.

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

4 GERMANY

4.1 The first sentence of Section 4.2.3 of the Agreement is hereby deleted in its entirety and replaced with the following: All Fees will be paid in the currency set forth on the Order Form, are non-refundable, and, except for amounts that OEM claims from Elastic that are either undisputed by Elastic or have been awarded to OEM by a competent court, all payments will be made without right of set-off or chargeback.

4.2 The last sentence of Section 6.2 (Elastic Support Warranty) of the Agreement is hereby deleted in its entirety.

4.3 The second sentence of Section 6.3 of the Agreement are hereby deleted in their entirety and replaced with the following: In the event of a breach of the foregoing warranty, subject to Section 9 below, 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 a reasonable period of time after 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.

4.4 The fourth sentence of Section 6.3 of the Agreement is hereby deleted in its entirety and replaced with the following: Additionally, the warranties set forth herein do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Elastic.

4.5 Section 6.5 of the Agreement is hereby deleted in its entirety and replaced with the following: OEM shall not be entitled to claim or commence proceedings for a breach of the warranties given under Section 6.2 through 6.4 above unless: (i) OEM notifies Elastic in writing about the breach within fourteen (14) days of first becoming aware of such breach; and (ii) any proceedings commenced within twelve (12) months after such breach was first notified by OEM to Elastic in accordance with Section 6.2 through 6.4 above, as applicable (whereas Section 6.3(ii) is considered to be a limitation period).

4.6 The following is added to the beginning of the second sentence of Section 7.1 of the Agreement: Notwithstanding the provisions of the German Trade Secrets Act (GeschGehG).

4.7 The words "SUBJECT TO SECTION 9 BELOW" are hereby added to the beginning of Section 8.1.4 (Limitation).

4.8 Section 9 of the Agreement is hereby deleted in its entirety and replaced with the following:

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

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

9.3 Save for the stipulation in Sections 9.1 and 9.2, the following restrictions shall apply:

(a) Elastic's total liability for simple negligence under Section 9.2, with respect to one Order Form for typical and foreseeable losses shall be limited for any and all damages to the maximum of the single amount of the order value (100%) of the affected Order Form in the calendar year where the losses occurred. For the avoidance of doubt, this limitation of liability applies regardless of its legal cause (e.g. because of non-performance, impossibility of performance, warranty, delay, fault at

conclusion of contract, breach of accessory obligation, rescission, tort). The parties agree that this limitation is fair in light of the potential damages of OEM and the potential damages that can happen under the Agreement.

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

9.4 Except as expressly set out in Sections 9.1, 9.2 and 9.3, Elastic's liability shall be excluded.

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

9.6 Without prejudice to (a) OEM's rights under § 812 BGB (German Civil Code) and (b) Section 9 of this Agreement, OEM's rights under § 536 BGB (German Civil Code) are hereby excluded.

4.9 Section 11.5 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.'

4.10 Governing Law; Jurisdiction and Venue. This Agreement will be governed and construed in accordance with the laws of the Federal Republic of Germany, without regard to its conflict of laws principles and the United Nations Convention on Contracts for the International Sale of Goods (UNCISG). All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of a court of competent jurisdiction in Munich, Germany and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. A breach by either party of Section 7 may cause irreparable harm for which the non-breaching party shall be entitled to seek injunctive relief.

4.11 The last three sentences of Section 11.16 (Entire Agreement) of the Agreement are hereby deleted in their entirety.

5 HONG KONG, CHINA

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

6 JAPAN

6.1 The second sentence of Section 6.5 of the Agreement is hereby deleted in its entirety and replaced with the following: TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES 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.

6.2 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of Japan without reference to its conflict of laws principles. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any applicable

courts, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

7 KOREA

7.1 Governing Law; Jurisdiction and Venue. This Agreement will be governed by the laws of the Republic of Korea, without regard to its conflicts of laws principles, and all suits hereunder will be brought in Seoul Central District Court. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable courts set forth above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense. A breach or threatened breach, by either party of Section 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.

8 SINGAPORE

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

9 UNITED KINGDOM

9.1 The words "SATISFACTORY QUALITY," are added after "MERCHANTABILITY," in Section 6.5 (Warranty Disclaimer) of the Agreement.

9.2 Section 9.1 in the Agreement is deleted in its entirety and replaced with the following: Disclaimer of Certain Damages. IN NO EVENT SHALL OEM OR ELASTIC OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE, DATA OR DATA USE, FOR ANY COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE USE OR INABILITY TO USE THE COMMERCIAL SOFTWARE, OR THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3 The words "TO THE EXTENT PERMITTED BY LAW, AND" are added to the beginning of Section 9.2 (Damages Cap) of the Agreement.

9.4 Section 9.3 is moved to Section 9.4. A new Section 9.3 is added to the Agreement as follows: NOTHING IN THIS AGREEMENT SHALL OPERATE OR HAVE EFFECT SO AS TO LIMIT OR EXCLUDE THE LIABILITY OF A PARTY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE OR FOR FRAUD INCLUDING FRAUDULENT MISREPRESENTATION OR FOR ANY LIABILITY THAT MAY NOT BE LAWFULLY EXCLUDED UNDER APPLICABLE LAW.

9.5 Section 11.4 (Attorneys' Fees) of the Agreement is hereby deleted in its entirety.

9.6 Governing Law; Jurisdiction and Venue. The parties intend that no term of the contract made by this Agreement may be enforced by any person who is not a party to it. The parties reserve the right to agree to rescind or vary this Agreement without the consent of any other person. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall be and hereby are excluded. This Agreement shall be governed by and construed in accordance with the laws of England and

Wales whose courts shall have exclusive jurisdiction over any and all disputes arising out of or in connection with it and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. A breach or threatened breach, by either party of Section 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.

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

10.1 The following is added after the word "DAMAGES" at the end of Section 9.1 of the Agreement: HOWEVER, WITH THE EXCEPTION OF DAMAGES CAUSED BY GROSS NEGLIGENCE (BEWUSTE ROEKELLOSHEID) OR WILFUL MISCONDUCT (OPZET) OF CUSTOMER OR ELASTIC.

10.2 Governing Law; Jurisdiction and Venue. This Agreement and any non-contractual obligation arising out of or in connection with it, is governed exclusively by Dutch law. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. All disputes arising out of or in connection with this Agreement, including its existence and validity, shall be resolved by the courts with jurisdiction in Amsterdam, The Netherlands, except where mandatory law provides for the courts at another location in The Netherlands to have jurisdiction. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any such action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense. A breach or threatened breach, by either party of Section 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.