



ELASTIC OEM LICENSE AND SUPPORT AGREEMENT

NOT FOR EDITING OR NEGOTIATION.

Effective Date: 01 NOVEMBER 2019

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"**), is entered into as of the date on which it is fully executed (the **"Effective Date"**) by and between Elasticsearch, Inc., a Delaware corporation, with offices located at 800 W. El Camino Real, Suite 350, Mountain View, CA 94040 (**"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 bolded:

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

1.2 **"Bundled Products"** means Commercial Software bundled for distribution with OEM Products.

1.3 **"Commercial Software"** means Elastic-branded software that is subject to proprietary license terms, including all updates thereto and new releases thereof, that are made generally available by Elastic to its customers during an applicable Subscription Term.

1.4 **"Community Software"** means Elastic-branded software that is licensed and distributed under the Apache License Version 2.0, including all updates thereto and new releases thereof.

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 Commercial Software that are eligible for use with respect to the Subscription Level purchased by OEM.

1.8 **"End User"** means an end user of the Bundled Products, who obtains the same from OEM, without the right to further distribute or sublicense the Bundled Products.

1.9 **"End User Billable Nodes"** mean, with respect to an End User, 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 (ii) the total GB of RAM 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.

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 Commercial Software included in the Bundled Products.

1.11 **"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.

1.12 **"Level 1 Support"** means the provision of a "Help Desk" and/or hotline for error logging and telephone assistance with software problem identification.

1.13 **"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.

1.14 **"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.

1.15 **"Node"** means an instance of the Community 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.

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

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

1.18 **"Open Source Software"** means open source libraries, components, utilities and other open source software, included with Commercial Software, which may have applicable license terms as identified on a website designated by Elastic or otherwise provided with the applicable Commercial Software or Documentation.

1.19 **"Order Form"** means an Elastic quote or ordering document pursuant to which OEM may order Subscriptions from Elastic.

1.20 **"Software"** means the Commercial Software and the Community Software.

1.21 **"Subscription"** means OEM's right, for a fixed period of time, to (i) distribute to End Users, and to grant End Users the right to use, the Commercial Software as part of the Bundled Product, for the number of Total Billable Nodes purchased in connection with such Subscription, and (ii) receive Level 3 Support from Elastic.

1.22 **"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 Commercial Software determines the specific Support Services that OEM is entitled to receive, and the Eligible Features and Functions of the Commercial Software that OEM and its End Users are entitled to use, as described more fully at <https://www.elastic.co/subscriptions>.

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

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

1.25 **"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.

1.26 **"Territory"** means the world, except with respect to countries, territories or jurisdictions where the marketing, sale or distribution of the Elastic 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.

1.27 **“Total Billable Nodes”** means, with respect to a Subscription, the sum of all End User Billable Nodes 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 Commercial Software as part of the Bundled Products and Documentation in the Territory, and OEM hereby accepts such appointment. Elastic reserves the right to market and distribute the Commercial 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 Commercial 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 during the applicable Subscription Term a non-exclusive, non-transferable, royalty-free, fully paid up, limited, right and license in the Territory to: (i) use the Commercial Software for Non-Production Purposes, (ii) distribute Commercial Software and associated Documentation to End Users, solely as part of the Bundled Products, (iii) grant to each End User, for the number of End User Billable Nodes purchased by OEM with respect to such End User, the right to use the Eligible Features and Functions of the Commercial Software applicable to the Subscription Level that OEM has purchased, on such End User's premises or in the End User's public cloud account, solely as part of the Bundled Products and subject to the applicable End User License Agreement (which OEM shall ensure is agreed to by each End User so as to make it a legally enforceable contract), and (iv) prepare derivative works from the Documentation provided by Elastic to OEM, for the purpose of creating documentation for the Bundled Products. OEM's use of any Open Source Software is subject to the applicable open source license, which may set forth terms and conditions that are in addition to or different from those set forth in this Agreement, but which will not restrict the license rights granted to OEM hereunder, and which may contain additional rights.

2.3 **Right to Distribute Through Resellers.** OEM may sublicense the right to distribute the Commercial Software as part of the Bundled Products to its third party distributors and resellers (each, a **“Reseller”**) provided that: (i) any such Reseller may only distribute the Bundled Products directly to End Users, (ii) OEM must cause the Reseller to enter into a written executed agreement with OEM (**“Reseller Agreement”**), binding such 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 2.3 and/or from a Reseller's breach of a Reseller Agreement.

2.4 **Reservation of Rights and Restrictions.** OEM acknowledges that the Commercial Software is and shall remain the sole and exclusive property of Elastic. Elastic reserves all rights to the Commercial Software not expressly granted herein, and Elastic grants, and OEM receives, no rights in the Commercial Software by implication or otherwise, except those rights expressly granted herein. OEM agrees not to: (i) copy or use Commercial 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 Commercial Software to any third party; (iii) except as expressly permitted herein, use Commercial 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 Commercial Software; or (v) make available to any third party any analysis of the results of operation of Commercial 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 Commercial 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 Commercial 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.

2.5 **Elastic Trademarks.** During the term of this Agreement, OEM may use the Elastic Trademarks solely to identify the Commercial Software, identify itself as an authorized distributor of the Commercial Software and a distributor of the Community Software, and promote the distribution of the Commercial Software as part of 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>. 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 Commercial Software as delivered to OEM. OEM shall cooperate fully with Elastic in the defense and protection of the Elastic Trademarks, and shall promptly advise Elastic if it becomes aware of the use 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 herein. 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.

2.6 **Branding.** OEM may distribute the Commercial 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 Commercial Software in the Bundled Products, and to state in all marketing, advertising, and packaging materials that Commercial Software contains the technology of Elastic.

2.7 **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 Resellers and End Users during the term of this Agreement.

2.8 **Suggestions, Ideas and 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 8 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 Bundled Product, up to the applicable number of Total Billable Nodes 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 in connection with developing and providing the Bundled Product (which includes use by OEM Affiliates) 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, and (ii) the number of support contacts in the Support Services Policy. In addition, OEM agrees to not:

- (a) use the Support Services to supply any consulting, support or training services regarding the Software to any third party other than End Users;
- (b) use the Support Services to obtain support for OEM's use of any Community Software that is being hosted by a third party providing such Community Software as a service; or
- (c) use Support Services to obtain support (i) for its use of Community Software for which no Subscription has been purchased or (ii) under a higher Subscription Level for its use of Software for which OEM has purchased a lower Subscription Level.

OEM agrees that any knowing failure to comply with the terms of this Section 3.3 will be deemed a material breach of this Agreement. In the event of any failure to comply with this Section 3.3, Elastic may, without prejudice to any other remedies available hereunder, at law or in equity, suspend the provision of Support Services to OEM if OEM fails to cure such breach within fifteen (15) days after receipt of written notice thereof.

4 REPORTS, PAYMENTS, TAXES AND RECORDS

4.1 Quarterly Reports. Within fifteen (15) days following the end of each calendar quarter, OEM shall provide to Elastic a written report ("OEM Quarterly Report") that sets forth (i) the number of Total Billable Nodes deployed under each applicable Subscription on the last day of such calendar quarter, (ii) the names and addresses of End Users that have licensed Bundled Products from OEM in the preceding calendar quarter, and the number of End User Billable Nodes associated with each End User, 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 True Up: Additions. If an OEM Quarterly Report indicates that OEM owes Fees to Elastic for any End User Billable Nodes deployed under an applicable Subscription, OEM shall include with such OEM Quarterly Report, payment to Elastic of the applicable Fees. OEM may also add to Subscriptions by executing one or more additional Order Forms setting forth the details of such addition, and referencing the Order Form under which the Subscription was initially purchased. 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. Any amount not paid when due may be subject to an interest charge at the rate of one percent (1%) per month or, the maximum rate permitted by law, whichever is less, determined and compounded on a daily basis from the date due until the date paid.

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 will promptly furnish Elastic with the official receipt of payment of these taxes to the appropriate taxing authority. 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. OEM agrees to use diligent, good faith efforts to market and sell the Bundled Products in the Territory and to maximize sales of the same. Without limiting the foregoing, OEM agrees that it shall sell, license and distribute OEM Products as Bundled Products (i.e., whenever Commercial Software is bundled with a sale, license or distribution of the OEM Products) only to End Users that have agreed to an applicable End User License Agreement. In addition, End User Billable Nodes allocated to a particular End User may not be 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 Commercial 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 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 5.2.

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

6 OBLIGATIONS OF ELASTIC

6.1 OEM Program Support. Elastic will assign a program lead to provide ongoing, cross-functional operational support for the OEM relationship. The program lead will provide a point of assistance and an escalation path for items not covered through the Support Services.

6.2 Bi-Annual Business Reviews. Elastic will organize bi-annual business reviews with the OEM to solicit feedback from OEM on overall satisfaction with the relationship, operational and technical support, mutual go-to-market efforts, solution sell-through success, and opportunities for improvement.

6.3 Bi-Annual Roadmap Reviews. Elastic will organize bi-annual roadmap review to provide visibility into upcoming releases (timing, content) and existing release end-of-life plans. OEM may also request on-demand roadmap reviews once per quarter if not already organized by Elastic. 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.

7 REPRESENTATIONS AND WARRANTIES; DISCLAIMER

7.1 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 and distribute the OEM Products, in combination with the Commercial Software, as contemplated hereunder, and (iii) its combination of the Commercial Software and the OEM Products in a Bundled Product does not and will not violate any applicable laws.

7.2 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.

7.3 Limited Performance Warranty. Elastic warrants that during the term of this Agreement, the Commercial Software will perform in all material respects in accordance with the Documentation. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and OEM's exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Commercial 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 Commercial 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 Commercial Software shall immediately terminate. The warranty set forth in this Section 7.3 does not apply if the applicable Commercial Software or any portion thereof: (a) has been altered, except by or on behalf Elastic; (b) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the Documentation; (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is used on equipment, products, or systems not meeting specifications identified by Elastic in the Documentation. 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.

7.4 Malicious Code. Elastic warrants that at the time the Commercial Software is made available for download by OEM, it will be free of Malicious Code. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and OEM's exclusive remedy shall be for Elastic to replace the Commercial Software with Commercial Software that does not contain any Malicious Code.

7.5 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, THE COMMERCIAL 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 COMMERCIAL 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 COMMERCIAL 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 COMMERCIAL SOFTWARE WILL BE ERROR FREE, THAT ALL ERRORS WILL BE CORRECTED OR THAT

THE USE OF COMMERCIAL SOFTWARE WILL BE UNINTERRUPTED.

8 CONFIDENTIAL INFORMATION

8.1 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

9 INDEMNIFICATION

9.1 Elastic Indemnifications.

9.1.1 Infringement Claims. Elastic will, at its expense (i) defend, or at its option settle, a claim brought against OEM by an unaffiliated third party alleging that the distribution or use by OEM of the Commercial Software infringes such party's patent registered as of the Effective Date, or any copyright or trademark of such party enforceable in the Territory, or makes unlawful use of such party's trade secret (each an "Infringement Claim") and (ii) indemnify OEM against and pay (a) any settlement of such Infringement Claim consented to by Elastic or (b) any damages finally awarded by a court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim.

9.1.2 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 Commercial 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 an update of the Commercial Software made available by Elastic that would have avoided the Infringement Claim; (iii) a modification of the Commercial Software that is not performed by Elastic; (iv) the combination, operation, or use of the Commercial 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 Commercial Software other than in accordance with the terms and conditions of this Agreement, (vii) damages attributable to the value of the use of a non-Elastic product or service or (viii) any third party Open Source Software.

9.1.3 Certain Remedies. If, during the term of this Agreement, the Commercial 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 Commercial 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, terminate OEM's licenses with respect to the Commercial Software.

9.1.4 Conditions. The obligations of Elastic in this Section 9 are conditioned upon OEM (i) notifying Elastic promptly in writing of any threatened or pending Infringement Claim, provided that failure to provide such notice will only relieve Elastic of its obligations under this Section 9 to the extent its ability to defend or settle an applicable Infringement Claim is materially prejudiced by such failure to provide notice; (ii) giving Elastic, at Elastic's expense, reasonable assistance and information requested by Elastic in connection with the defense and/or settlement of the Infringement Claim and (iii) tendering to Elastic sole control over the defense and settlement of the Infringement Claim. OEM's counsel will have the right to participate in the defense of the Infringement Claim, at OEM's own expense. OEM will not, without the prior written consent of Elastic, make any prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Infringement Claim.

9.1.5 Limitation. THE PROVISIONS OF THIS SECTION 9.1 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.

9.2 Indemnification by OEM.

9.2.1 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 a Bundled Product 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 Bundled Product, 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.

9.2.2 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.

10 LIMITATION OF LIABILITY

10.1 Disclaimer of Certain Damages. 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 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.

10.2 Damages Cap. IN NO EVENT SHALL ELASTIC'S OR ITS LICENSORS' AGGREGATE, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL FEES OEM WAS REQUIRED TO PAY ELASTIC UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

10.3 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.

10.4 Exclusions. The foregoing limitations set forth in this Section 10 shall not apply to (i) Elastic's obligations under Section 9.1(i) or OEM's obligations under Section 9.2; (ii) OEM's breach of the scope of the licenses set forth in Section 2; (iii) OEM's obligations under Section 2.3(iii); (iv) OEM's indemnification obligations under Section 5.2; or (v) damages arising out of a party's (a) breach of its obligations under Section 8; (b) gross negligence, willful misconduct, fraud, bad faith or a breach of applicable law; or (c) violation of the intellectual property rights of the other party.

11 TERM AND TERMINATION

11.1 Term. The term of this Agreement shall commence on the Effective Date hereof and shall expire three (3) years thereafter unless sooner terminated in accordance herewith. 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.

11.2 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.

11.3 Termination for Cause. Either party may terminate this Agreement upon giving notice in writing to the other party 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, (v) the other party assigns or purports to assign this Agreement in breach of its provisions, or (vi) the other party commits any other breach of a material obligation

hereunder which is by its nature incurable or which such other party fails to cure within thirty (30) days of written. Termination is not an exclusive remedy and, except as expressly provided herein, the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, at law, or in equity.

11.4 Obligations on Termination. Upon termination of this Agreement for any reason: (i) OEM shall immediately cease using and shall deliver to Elastic, any unused sales literature and other written information and materials supplied by Elastic pursuant to this Agreement or which contain Elastic's Trademarks; (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 rights granted to End Users under any End User License Agreement will remain in effect in accordance with their terms.

11.5 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.

11.6 Survival. All payment obligations under Section 4, plus Sections 2.5, 2.8, 4.3, 4.4, 7, 8, 9, 10, 11.4, 11.5, 11.6 and 12 of this Agreement shall survive any termination or expiration of this Agreement.

12 MISCELLANEOUS

12.1 Affiliates. The parties agree that their respective Affiliates may also conduct business under this Agreement by entering into Order Forms, subject to such additional and/or alternative terms and conditions to those contained in this Agreement as may be mutually agreed upon in order to comply with local country law or business practices, and which are set forth in a country specific participation agreement, executed by the applicable parties which otherwise incorporates the terms and conditions of this Agreement ("**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.

12.2 Anti-Corruption. OEM acknowledges that it is aware of, understands and has complied and will comply with, all applicable U.S. and foreign anti-corruption laws, including without limitation, the U.S. Foreign Corrupt Practices Act ("**FCPA**") and the U.K. Bribery Act. Without limiting the foregoing, OEM and its employees and agents shall not directly or indirectly make any offer, payment, or promise to pay; authorize payment; or 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 in obtaining, retaining or directing any such business.

12.3 Assignment. OEM may not assign this Agreement, in whole or in part, without the prior written consent of Elastic, provided, however, that any corporate reorganization of OEM, an assignment to a subsidiary or affiliate, or any sale of OEM's assets, stock or a merger into another entity shall not require Elastic's consent if the successor entity agrees in writing to be bound by the obligations of this Agreement. Any assignment in violation of this Section 12.3 shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns.

12.4 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.

12.5 Export Control. OEM acknowledges that the Commercial Software, Support Services, and technologies related thereto are subject to the Export Administration Regulations ("**EAR**") (15 C.F.R. Parts 730-774 (2010)) and the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control. 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.

12.6 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.

12.7 Governing Law; Jurisdiction and Venue.

(a) **OEMs in California.** If OEM is located in California (as determined by the OEM address specified below the signatures on this Agreement), this Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court located in Santa Clara County.

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

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

(d) **Equitable Relief.** A breach or threatened breach, by either party of Section 8 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.

12.8 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.

12.9 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.

12.10 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 12.10.

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

12.12 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.

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

12.14 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. 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 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:

1. That Commercial Software is licensed, not sold, as an embedded portion of the Bundled Product, and is not licensed on a stand-alone basis;
2. That title to the Commercial Software does not pass to the End User;
3. No direct warranties from Elastic to or for the benefit of the End User;
4. That each license granted to an End User shall be a non-exclusive license to use, in object code form, the Eligible Features and Functions of the Commercial Software in the Bundled Product for the duration of the applicable Subscription Term and for the number of End User Billable Nodes allocated to that End User;
5. Restrictions on End User's license to the Commercial Software as set forth under Restrictions set forth below;
6. Protection of Elastic's intellectual property rights to the Commercial Software under terms and conditions similar to the terms and conditions under Section 2.4 and 2.5 of the Agreement; and
7. An export control notice similar to Section 12.5 (Export Control) in this Agreement (other than the last sentence of Section 12.5).

Restrictions:

End User agrees not to:

- (i) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Commercial 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 Commercial Software on more End User Billable Nodes than the number of End User Billable Nodes allocated to that End User;
- (iii) prepare derivative works from, modify, copy or use the Commercial 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 Commercial Software in whole or in part to any third party;
- (v) use the Commercial 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 unless the End User provides managed services;
- (vi) alter or remove any marks and notices in the Commercial Software; or
- (vii) make available to any third party any analysis of the results of operation of the Commercial Software, including benchmarking results.