DoD ESI Master License Agreement

DEPARTMENT OF DEFENSE
MASTER LICENSE AGREEMENT FOR ELASTIC PRODUCTS AND SERVICES

This document sets forth the Department of the Defense (DoD) Software License Requirements ("DoD ESI Master License Agreement"). Licensor's Master Customer Agreement is attached hereto as Exhibit A and made a material part hereof by this reference. This document, including the Master Customer Agreement (MCA) attached as Exhibit A, Elastic Services Addendum attached as Exhibit B, and Elastic Software Subscription Addendum attached as Exhibit C, constitutes the Agreement between Elasticsearch Federal, Inc. (Licensor) and the DoD (the "Agreement"). The terms and conditions set out below in these Software License Requirements, supplement, to the extent a conflict exists, supersede, and take precedence over the terms and conditions of Exhibits A, B, and C. For clarification in this agreement, Publisher and Licensor are synonymous. To the extent that any professional services that require personnel with security clearances are ordered or delivered under this Agreement, Licensor's affiliate Endgame Systems, LLC must serve as the vendor.

With regard to any conflict in license terms between the DoD ESI Master License Agreement (MLA) and any GSA / NASA SEWP negotiated license agreement, the Order of Precedence is in the following order: 1) the DoD ESI MLA and 2) any GSA / NASA SEWP negotiated license agreement.

1. **Enterprise Language:** The parties agree that more than one agency of the DoD may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "DoD Department or Agency" as defined by the 48 Code of Federal Regulations, section 202.101, and to include the Intelligence Community[1] and the US Coast Guard, the terms and conditions of this Agreement apply to any purchase of products made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software, including any Licensor's published policy or program documentation or customer ordering documents. It is also understood by both parties that any Licensor policies, URLs referencing other terms, conditions or policies or educational documents will not be considered part of this license agreement.

1A. **Unacceptability of General License Terms:** The following terms in the table below, when they appear in the License Agreement, have been determined unacceptable to the

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[1] The Intelligence Community is a federation of Executive branch intelligence agencies and Organizations that are comprised of 17 member organizations https://www.dni.gov/index.php/what-we-do/members-of-the-ic Office of the Director of National Intelligence (ODNI) is authorized to procure IT through the DOD ESI per the Memorandum of Agreement, dated 15 May 2008. https://dodcio.defense.gov/portals/0/documents/net-centric-moa.pdf

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Government as a result of a conflict with Federal law or as a result of incompatibility with the Government's needs. Any such terms in the Master Customer Agreement or SLA will have no force or effect in any resulting contract.

Attorney fees and costs; equitable relief; arbitration	The Government does not agree to any clauses relating to the award of attorney's fees and costs or equitable relief because they may violate the Anti-Deficiency Act, 31 U.S.C. § 1341 (a)(1)(B). Equitable relief and the award of attorney's fees, costs, or interest are only allowed to the extent permitted by statute (e.g., the Prompt Payment Act or Equal Access to Justice Act). Disputes will be resolved according to the disputes clause. Binding arbitration will not be used.
Taxes	The Government does not agree to any clauses purporting to make the Government responsible for all taxes. Any taxes the Licensor believes to be payable by the Government must be submitted individually to the Contracting Officer for adjudication or included in the firm-fixed price.
Arbitration	The Government does not agree to any provisions relating to mandatory arbitration. Disputes must be resolved in accordance with applicable federal statutes (e.g., Contract Disputes Act) and regulations.
Equitable remedies, injunctions	The Government does not agree to any clauses consenting to or entitling the Licensor to equitable relief or injunctions. Equitable relief for copyright, trademark, or patent infringement by the Government is only available to the extent permitted by federal statutes.

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Unilateral termination by Contractor for breach	The Government does not agree to any clauses permitting unilateral termination of the contract or license agreement by the Licensor. Any terms in Licensor commercial license that call for immediate termination (including remote disabling of services by Licensor), or termination in the event a Government corrective action is not taken within a time frame that is less than 90 days, shall be revoked in favor of a 90-day time for the Government to take corrective action Recourse against the United States for any alleged breach of this agreement must be made under the terms of the contract disputes clause (Contract Disputes Act). While a dispute is pending, the Licensor shall proceed diligently with performance of this License Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and must comply with any decision of the DoD ESI Contracting Officer.
Assignment by licensor	The Government does not agree to any license terms providing for assignment by the licensor. Assignment of government contracts to include the MLA without the government's prior approval is prohibited by statute, except for assignment of payment to a financial institution, which must comply with the Assignment of Claims Act (31 U.S.C. § 3727, 41 U.S.C. § 15) and Federal Acquisition Regulation Subpart 32.8.

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Confidentiality	The Government does not agree to any clauses asserting that unit prices or license agreement terms are confidential or proprietary information. Neither the license agreement nor the price list shall be deemed "confidential" or "proprietary" information notwithstanding any marking to that effect. The Freedom of Information Act (FOIA) governs what information must be disclosed and what information may be withheld by the Government.
Licensor Beta Products and/or Services	The Government will not accept any Licensor products and/or services with terms that include free trial periods that convert to pricing terms after the specified period.
Acceptance of Third Party Terms	End user "Click through", "Use means acceptance", "If you Do Not Accept Stop Using" and similar licensing terms that purport to bind the Government due to access/use by an end user are disavowed. Such terms shall have no effect.
General Data Protection Regulation (GDPR)	The Government does not waive its sovereign immunity and does not consent to suit arising under GDPR. The Government represents that it is not subject to the terms of GDPR. To the extent the Government is exempt from complying with the GDPR, any terms in the License Agreement, which purport to impose upon the Government any obligations under the GDPR, do not apply.

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Vague and Overbroad Usage Restrictions	The Government cannot agree not to use the Licensor's Products and Services "in a way prohibited by law, regulation, governmental order or decree". Similarly, the Government, as represented by the Department of Defense, cannot agree "not to use the [Licensor's] services in any manner which could cause serious bodily injury to any person, or that was cause severe physical or environmental damage". Such license terms are vague and overbroad. However, the Government can certainly agree to use the Licensor's Product and Services in a manner that does not violate U.S. Federal law, and in a manner consistent with the terms and conditions of the License Agreement.
Anti-Competitive License Terms	The Government cannot agree to license terms that require the Government to take actions that could inhibit future competitive procurements. Such terms violate the Competition in Contracting Act (CICA) and shall have no effect with respect to the Government.
Throttling	Licensor may not throttle Government cloud services based on a perceived contract or Licensor license breach. All perceived contract/ license breaches that cannot be amicably resolved by the parties must be resolved in accordance with the Contract Disputes Act.
Remote Disabling	Licensor may not disable Government cloud services based on a perceived contract or license breach. All perceived contract/ license breaches that cannot be amicably resolved by the Parties must be resolved in accordance with the Contract Disputes Act.

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Forms of Intellectual Property	The Government can only take license to forms of intellectual property that are described in United States federal law or procurement regulation. The Government cannot take license to any moral rights, or any know-how or trade secrets (unless recorded and delivered with a corresponding data rights posture). Further, the Government cannot to agree to license terms regarding forward looking/inchoate intellectual that does not exist at the Agreement/Order execution. The Government is not agreeing to licensing trademarks, service marks or trade names, however Government agrees to respect, retain and leave undisturbed all trademarks, service marks and trade names that are placed in the licensed materials by Licensor or its resellers as applicable.
Monitoring	Licensor may monitor Government usage of its services. Licensor may not access (unless otherwise requested by the Government for Licensor to perform the servies under the MLA), download, copy or monitor Government cloud content in any way shape or form.

2. **Choice of Law/Venue**: This Agreement shall be governed by and construed in accordance with the substantive laws of the US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulations (DFARS), without regard to principles of conflict of laws.

3. **Indemnification**: The DoD does not have the authority to and shall not indemnify any entity. The DoD agrees to pay for any loss, liability or expense, which arises out of or relates to the DoD's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DoD is established by a court of law or where settlement has been agreed to by the DoD agency and the Department of Justice. This provision shall not be construed to limit the DoD's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the DoD.

4. **Patent, Copyright, Trademark, and Trade Secret Protection:**
   a)   The Licensor shall, at its expense, indemnify the DoD from any suit or proceeding which may be brought by a third party against the DoD, its departments, officers or employees for the alleged infringement of any United States patents,

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copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Licensor. For the purposes of this Agreement, "indemnify" shall mean the Licensor's specific, exclusive, and limited obligation, subject to all applicable limitations set forth in this Agreement, to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the DoD for its reasonable, non-excessive, and actual administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The DoD agrees to give Licensor prompt notice of any such claim of which it learns. The DoD has the sole authority to represent itself in actions brought against the DoD. Licensor shall not, without the DoD's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the DoD has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the DoD to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the DoD to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the DoD. It is expressly agreed by the Licensor that, in the event it makes an appropriate request that the DoD to provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the DoD for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the DoD for such support.

b)   The Licensor agrees to exercise commercially reasonable due diligence consistent with industry standards to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise commercially due diligence consistent with industry standards to ensure that all licensed products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. If, in the Licensor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the DoD to continue the use of such licensed products.

c)   If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either procure the right to

continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.

d) If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (e) above, the Licensor agrees to, upon return of the licensed products, refund to the DoD the license fee paid for the infringing licensed products, pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees.

e) The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.

f) Notwithstanding the above, the Licensor shall have no obligation under this Section 4 for:

(1) Modification of any licensed products provided by the DoD or a third party acting under the direction of the DoD;

(2) any material provided by the DoD to the Licensor and incorporated into, or used to prepare the product;

(3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;

(4) use of the licensed products in other than its specified operating environment;

(5) the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;

(6) infringement caused by a non-Licensor product alone;

(7) the DoD's use of the licensed product beyond the scope contemplated by the Agreement; or

(8) the DoD's failure to use corrections or enhancements made available to the DoD by the Licensor at no charge.

g) The obligation to indemnify the DoD, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

5. Virus, Malicious, Mischievous or Destructive Programming:
Licensor warrants that the licensed product as delivered by Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products (each a "Virus"). However, the licensed products may contain a key limiting use to the scope and

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quantity of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.

The DoD's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the licensed products with a copy that does not contain Virus, and (b) if the DoD, has suffered an interruption in the availability of its computer system caused by Virus contained in the licensed product, reimburse the DoD for the actual reasonable cost to remove the Virus and restore the DoD's most recent back up copy of data provided that:

a) the licensed products have been installed and used by the DoD in accordance with the Documentation;
b) the licensed products have not been modified by any party other than Licensor;
c) The DoD has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the licensed products and has used a generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the DoD for loss of the DoD's data arising from the failure of the licensed products to conform to the warranty stated above.

6. **Delivery**: Publisher's delivery of the Products to DoD shall be by electronic download or as otherwise specified in Delivery Orders, FOB Destination.

7. **Program Warranty.:**   Licensor warrants that during the applicable Subscription Term, specified in the order that the Software will perform in all material respects the functions described in the Documentation when operated in accordance with the Documentation on a Supported Platform. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Products 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, Customer may elect to terminate the associated Subscription, and Elastic will promptly refund to Customer any pre-paid, unused fees paid by Customer to Elastic for such Subscription. Additionally, the warranties set forth herein only apply when notice of a warranty claim is provided to Elastic during the applicable Subscription Term, and do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Elastic.

a) Publisher Remedies: Licensee must report to Licensor in writing any breach of the warranties during the relevant warranty period. Licensor shall use commercially reasonable efforts to correct or provide a workaround for reproducible Software

errors that cause a breach of this warranty or, if Publisher is unable to make the Software operate as warranted within a reasonable time considering the severity of the error and its impact on Licensee, Licensee shall be entitled to return the Software to Publisher and recover the fees paid by Licensee to Licensor for the license to the non-conforming Software.

b)   Discontinuance of Support: Licensor will give DoD one hundred eighty (180) days advance written notice before Licensor or its authorized Resellers discontinue support of any Product.

8.   **Limitation of Liability:** The Licensor's liability to the DoD under this Agreement shall be limited to the greater of (a) the two times the value of the purchase order in connection with which liability arose issued; or (b) $250,000. This limitation does not apply to damages for:

a)   Bodily injury caused by gross negligence or willful misconduct;

b)   Death caused by gross negligence or willful misconduct;

c)   intentional injury;

d)   damage to real property or tangible personal property attributable to Licensor's gross negligence or willful misconduct; or

e)   licensor's indemnity of the DoD for patent, copyright, trade secret, or trademark protection.

In no event will the Licensor be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement. Licensor will not be liable for damages due to lost records or data.

9.   **Termination:** Licensor may not terminate this Agreement for non-payment from reseller.

a)   The DoD may terminate this Agreement without cause by giving Licensor thirty (30) calendar day's prior written notice (Notice of Termination) whenever the DoD shall determine that such termination is in the best interest of the DoD (Termination for Convenience). Termination of this Agreement shall not terminate individual orders of Licensor offerings to which the terms and conditions of the Agreement apply. Termination of prime orders between the DoD and a reseller is a matter between those parties that does not involve Licensor.

10.   **Background Checks:** This term will be applicable if required by local command policy and prior to the commencement of on-site professional services by Licensee employee who is proposed for assignment to perform services at your site or via remote access in or from the United States and only if the Licensor employee does NOT possess a Department of Defense ("DoD") performed National Agency Check with Inquiries ("NACI") or a DoD security clearance of SECRET or higher. Licensor may, in its sole discretion, reject any orders for Services with respect to which the Government has not

waived the background check requirement in this paragraph and the following paragraphs and such rejection shall not constitute breach or default under this Agreement.

Licensor, or its agent, will complete a criminal background check, or confirm that such a background check has been completed, on such employee. The criminal background check shall consist of a check of public records, to the extent available at the county level, where the employee has established credit in the United States as determined by a social security trace. The check is for felony and misdemeanor convictions within the seven (7) years preceding the date of the check. To the extent not prohibited by law, Licensor shall not assign any employee to perform such services for whom a criminal background check, at the time of its completion, uncovered conviction of a felony or conviction of a misdemeanor. In the event that DoD requires on-site support outside the United States, Licensor will make reasonable efforts to work with DoD in order to address its security concerns.

11.   **Confidentiality:** Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.

12.   **Publicity/Advertisement:** The Licensor must obtain DoD approval prior to mentioning the DoD or a DoD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.

13.   **Territory:** Any Department of Defense (DoD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired.

14.   **Backup for User Documentation:** Licensor grants DoD to make a reasonable number of copies of User Documentation for DoD's internal business purposes. DoD is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. DoD is also responsible for reporting to Licensor if DoD learns of the misuse or mishandling of User Documentation provided under the contract to DoD personnel, contractors or Government employees.

15.   **Transfers and Assignments:** Licensee is authorized to transfer or assign the Software or Licensee's rights in the Software, and such authorization would include sublicensing, assignment or transfer among or between DOD agencies, or authorize any portion of the Software to be copied onto or accessed from another individual's or entity's computer, except as may be explicitly provided in this Agreement.

Licenses purchased by third party contractors under the DoD ESI Agency Catalog/ Blanket Purchase Agreement may only be used to support DoD missions, and third party

contractors shall not be permitted to transfer or assign any licenses or other items purchased under this MLA. Licensor shall not be required to fill orders placed by third party contractors unless third party contractor provides documentation establishing that DoD has authorized them to make purchases under the DoD ESI Agency Catalog/ Blanket Purchase Agreement. Such third party contractors shall have a one-time right to assign such licenses or other items purchased under this MLA to the DoD.

a)   Transfers: within the DoD and in the event that an Authorized User has a valid license under this Agreement and that Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Authorized User agency, the agency shall have the right to assign the affected program licenses to a successor.

b)   Assignments: Licensee is authorized to assign ownership of licenses when Licensee intends to designate a DoD Agency or other, as determined, to assume ownership of the license along Licensor written concurrence.   All activities by such Assignee shall be subject to the Licensor's MCA as modified herein. Any deviation shall be subject to a separate agreement between Licensor and such Assignee, specifying conditions for the management and maintenance of the Software, which agreement shall not impose any more restrictive covenants than are provided to Licensee in the Licensor's MCA, as modified herein. The assignment of licenses will be without cost to any party involved in the assignment of licenses. It is further understood that Assignee will be responsible for all future software maintenance costs of any assigned licenses.

c)   Licensee shall complete any required Licensor documentation required to facilitate the transfer or assignment of licenses and continuation of support for the transferee. All license transfers or assignments will be without cost to the Licensee, provided that the licenses are current with regard to Licensor annual maintenance or subscriptions, and the Licensee does not re-market or otherwise intend to resell the licenses to be transferred.

It is inherently understood Licensee and the successor transferee or assignee agree to be bound to this Master License Agreement.

16.   **Functionality Replacement and Extended Support.** If Licensor removes any or all of the material features or functionality to which DoD is being granted access hereunder from the Software without introducing replacement or substitute functionality such that the Software no longer performs its core operations as when initially released and Licensor subsequently, within the period of a specific subscription for the Software, offers those features or functionality in a new or different product (whether directly or indirectly or through a third party), then upon request by DoD the License, for the remainder of that subscription only, will be deemed to include (i) the portion of those new or different products that contain the original features, or (ii) if those features cannot be

separated out, the entire product, or (iii) another reasonable substitute as determined by DoD, will be provided to DoD under the terms of this Agreement at no additional charge to DoD. If the Software provided to DoD is updated as replacement, renamed or re-branded applications or products for any reason, within the period of a specific subscription for the Software, then DoD shall be entitled to the same license to use the replacement, renamed or re-branded product as DoD had with respect to the Software that DoD had immediately prior to such replacement, renaming or re-branding, at no additional charge for the remainder of that subscription only to DoD so long as (a) the new applications or products are functionally equivalent, at a minimum, and the same conditions of use apply as to the Software and (b) Licensor ceased or has advised DoD that Licensor intends to cease supporting the initial Software while DoD was still purchasing Maintenance and Support for such Software. If the form, fit, or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced, and/or the Licensor provides the same or substantially similar functionality as a separate or renamed product, then the DoD is entitled to license such software without any additional license requirements or additional maintenance fees, but only for the remainder of a subscription term applicable to the licensed products acquired hereunder. However, throughout the term of this agreement, the Licensor will provide support services for each major release for at least 18 months from the General Availability date, and actively maintain the last minor release of the two most recent major branches of Elasticsearch, and compatible releases of Kibana, Beats, and Logstash.for at least a period of one year after the publisher declares an "end-of life" to the software.

17. **Rights of Survivorship of the Agreement.** This Agreement shall survive unto Licensor, its Successor, rights and assigns for a term of 6 years from date of execution of this Agreement. Notwithstanding the foregoing, paragraphs 1A (confidentiality provision only) and 11 shall survive the termination or expiration of this Agreement indefinitely and paragraph 4(a) shall survive the expiration or termination of this Agreement for seven additional years. Licensor's indemification obligations under paragraph 4(a) shall be limited to infringement claims based on DoD's use of Licensor's products during the period of a subscription or use that otherwise occurs during the period of performance of an order under this Agreement. The software and agreement terms and conditions as covered under this agreement shall survive the acquisition or merger of Licensor by or with another entity. Any software name changes, re-packing or merger of similar products that carry forward the same or similar function of the software shall be supported with updates, upgrades and new releases under this agreement at no additional cost.

18. **Audit Responsibilities:** This Section sets out the sole audit right under this agreement.

    a)   DoD will maintain, and promptly provide to Publisher upon its request, but no more frequently than once in a twelve (12) month period, accurate records

regarding use of the software by or for DoD. If DoD becomes aware of any unlicensed use of the software, DoD will notify Contractor and Publisher within 15 calendar days, providing reasonable details.

b)   DoD will perform a self-audit, upon the request of the Licensor, but no more frequently than once in a twelve (12) month period, and report any change in software program use. The Licensor may make such a request of an individual agency of the DoD and will notify the DoD Agency Program Manager in the event of such a request. If the Licensor requests a self-audit from a DoD agency, it will not make another request of that agency for at least 12 months. Any self–audit, which shall be certified by a DoD employee authorized to do so, shall include, but not be limited to, the number of copies of the programs installed and/or in use , the designated system(s) on which the programs are installed and/or running, and if applicable, the number of users of the programs. DoD shall notify Reseller and Licensor of any unlicensed use no later than 90 calendar days after completion of the self-audit.

c)   If the self-audit described in (a) or (b) above shows unlicensed use by the DoD, the limit of DoD's responsibility for any unlicensed use is the requirement that DoD (1) promptly stop using the software and delete any unauthorized copies, or (2) purchase additional licenses of the product through Reseller in accordance with any current ESI pricing. The procurement of additional licenses, if required, will transpire no later than 60 days after DoD's aforementioned notification. There will be no penalties involved in the procurement of the additional licenses. (Any prior unlicensed use may be claimed under the Contract Disputes Act.)

19.   **Reserved**

20.   **Reserved**

21.   **Section 508 of the Rehabilitation Act Compliance:** Publisher shall provide a completed Voluntary Product Accessibility Template (VPAT) for all products and services, with respect to which accessibility features are relevant, that are provided under this agreement, applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site **www.section508.gov**. The Publisher's Section 508 compliancy information in the form of a VPAT, must be readily available at the Publisher's website or provided upon request.

22.   **Orders**: Any term or condition in an order to be placed that will expressly supersede a term or condition of this agreement must be approved in writing via email by the designated DOD PCO for this ESI BPA, a copy of which shall be attached to such order.

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Any term or condition in an order that has been placed that expressly supersedes a term or condition of this agreement is ineffective unless subsequently agreed to in writing via an email by the designated DOD PCO for this agreement attached to the order with an Administrative Modification.

23. **Temporary Use of Software During Times of Conflict and/or Natural Disaster:** As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, DoD may temporarily deploy and install or use on, or access from qualified desktops or servers, a reasonable number of Licensor software products in addition to those previously licensed pursuant to this Agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations (TED's) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces.

For licenses connected to a DoD network server, on a semi-annual basis, Licensor shall provide an additional temporary license pool equal to the quantity of network versions purchased, which may be accessed during a TED event. After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by the Licensor, the DoD will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under this Agreement to purchase additional perpetual licenses equal to the number of TED Licenses not removed from service. DoD agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the MCA contained herein.

24. **Reserved**

25. **Authorized Users:** An Authorized User includes, but is not limited to DoD government employees (military, civilian, reserves, national guard), contractors, non-human devices, detailed individuals that are included and accounted for in the DoD in support of DoD missions.

26. **Data Sharing.** The parties agree that as long as one party has a valid license, the sharing of data extracted from the software is unrestricted. For purposes of this section, data

extracted from the software includes only outputs resulting from application of the software to Government data and does not include the software itself, software documentation, or derivatives works of the software (unless authorized by the Licensor) or documentation. This license also provides for the ability of users to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters. Additionally, the DoD may disclose, within the U.S. Government, the results of any benchmark or performance tests of Licensor programs; and, if applicable, disclose within the U.S. Government, the results of any security testing of a services environment or associated infrastructure, including any of the following: network discovery, port and service identification, vulnerability scanning, password   cracking, remote access testing, or penetration testing.

27.   **Data Recovery:** This license provides the DoD all rights concerning data sharing, data access, data transfer and data manipulation in all types of digital environments, including on premise, cloud, hybrid cloud or multi-tenant environments. Additional licenses will not be required for any type of data recovery servers, excluding mirrored or concurrent environments, as long as the number of data recovery servers equals the number of primary servers. This language does not modify the authorized use limitation in the relevant Order.

28.   **Virtualization:** For virtualized servers, both parties agree that only the primary server must be licensed. No additional licenses will be required to accommodate virtualization using commercially accepted methods or practices.   Notwithstanding the foregoing, the total addressable memory among virtualized or non-virtualized servers the Government uses may not exceed the authorized use limitation in the relevant order.

29.   **Reserved**

30.   **Third Party Software:** Notwithstanding anything to the contrary, the Government shall not be subject to third party terms and conditions that are contrary to Federal law.

31.   **Additional Functionality:** Any additional functionality provided on Licensor Products shall not impose additional license terms and/or fees on the Government. This clause shall not affect or limit Licensor's ability to update or modify its products and only applies to the extent that additional functionality is added to a Licensor Product during the term of a subscription.

32.   **Reserved.**

33.   **Reserved.**

34.   **Reserved.**

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35. **Reserved**.

36. **Finality of Terms:** This agreement and any attachments to this agreement will be the sole document governing the granting of licenses between DoD and Licensor. There shall be no changes to this license agreement unless agreed to by both parties in writing.

37. **Software Titles Incorporated by this License Agreement:** All software titles sold by Licensor will be incorporated into this agreement and any and all other software or software title which may be added through Licensor's in-house development or corporate acquisition. It is the DoD's anticipation this agreement will cover any and all software companies Licensor may purchase in the future.

38. **Use of this Agreement by the Federal Government:** The parties agree that, if a federal agency implements another contracting vehicle for Licensor's products, and if the licensee is an agency of the Federal Government, then, the terms and conditions of this Agreement can apply to any purchase of software products by that agency, and that the terms and conditions of this Agreement become part of the purchase document without need for further execution. Additionally, should a Federal Government Agency desire to use this agreement, it will be without remuneration to any party.

39. **DoD Enterprise License:** The parties agree, that in the spirit of cooperation, there may be an instance, during the course of this agreement, where DoD desires an Enterprise Agreement with the publisher. The parties agree that all will work towards implementation of a DoD Enterprise Agreements, that all terms contained in this agreement may become part of the Enterprise Agreement and the DoD and Publisher will work cooperatively on issues that may hamper such an agreement (legacy licenses and the accompanying support, Right-sizing the enterprise and so on).

40. **Deployment and Use of Perpetual, Subscription or Term Licenses in a Cloud Computing Environment:**
DoD can deploy and use any quantity of its perpetual or term Publisher licenses in any cloud computing environment (private or public) and with any third-party cloud service provider. The use of DoD licenses is limited to the mission and business of the DoD. The DoD retains all ownership responsibilities of the licenses. The DoD will maintain records of license deployment.

DoD can transfer its perpetual and term Publisher licenses between on-premises data centers and third party cloud service providers or to other third party cloud service providers without charge, limitation, or change in functionality. The DoD shall have the right to determine the version level for transfers.

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For licensed programs used in Cloud Environments and for which software support or maintenance is current, DoD may upgrade or downgrade the version level without charge.

When counting Publisher processor license requirements in cloud computing environments, the Publisher Processor Core Factor Table is applicable. Deviations are not allowed to the Core Factor Table based on the cloud service provider used.

41.   **Ineffective Provisions**: If any document incorporated by reference into this agreement, and/or referenced therein, contains a provision (a) allowing for the automatic termination of your license rights or technical support services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law, and/or (d) that otherwise violates applicable Federal law, then, such terms shall not apply and shall have no effect. If any document incorporated by reference into this agreement, including additional terms and conditions included and/or referenced therein, contains an indemnification provision, such provision shall not apply as to the United States indemnifying the Publisher or any other party.

42.   **Previously Acquired Licenses:** All Publisher licenses, of any versions or releases, that were acquired and/or assigned to any DoD agency under the BPA to which this MLA pertains or the GSA Schedule contract(s) to which such BPA applies prior to the effective date of this MLA shall be converted and replaced with licenses subject to this MLA. The conversion described in this paragraph shall not affect the price, quantity, or duration of previously acquired Publisher licenses.

43.   **Reserved.**

44.   **Professional Services:**   Publisher may subcontract all or part of the Services to be performed, to a qualified third party only with the explicit written acceptance from the Ordering Level Contracting Officer. Any subcontracting of services must be noted on the Order Form and acknowledged in the customer's delivery order.

45.   **Parallel Operations:**   For no additional cost, the DoD agency shall have the ability to run non-Billable Nodes of Publisher's software, defined as any Nodes used in non-production environments consistent with paragraphs 3.3, 3.9, and 3.10 of the Elastic Software Subscription Addendum in Attachment A. If additional licenses are required for Nodes to use in production environments than the quantity owned by the DoD agency, the DoD will acquire the necessary licenses.

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In witness whereof, the Parties hereto have executed this Agreement, including all Exhibits, as of the date of the last signature below by their duly authorized representatives.

Agreed to by: Elastic

By: Steve Tibbets
_____
Name: Steve Tibbets
_____
Title: Lead commercial counsel, PS
_____
Date: 11/12/2021
_____

Agreed to by: Department of Defense

By: _____
Name: _____
Title: _____
Date: _____

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<u>**EXHIBIT A**</u>

MASTER CUSTOMER AGREEMENT (MCA)

This **Elastic MCA**, including all attachments, any Addendum (as defined below), schedules and exhibits, and documents at referenced URLs, all of which are incorporated herein by this reference (collectively, this "**Agreement"**), is entered into as of the date on which it is fully executed ("**Effective Date"**), by and between the Elastic entity ("**Elastic**"), and the entity identified as the "Customer" ("**Customer**"), each as set forth on the signature block of this Agreement, provided that, solely in the case of a U.S. Government Customer, this Agreement is entered into as of the date of the Government executes the Government's contract or order under which the U.S. Government Customer obtains the Products and/or Services that are the subject of this Agreement; and, solely in the case of U.S. Government Customers, in lieu of executing this Agreement and/or applicable Addenda hereto, this Agreement shall be made an addendum to the Government's contract or order.

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

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

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

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

1.4   **"Consulting Services"** means consulting services provided to Customer by or on behalf of Elastic.

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

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

1.7   "**Infringement Claim**" means a claim brought against Customer by an unaffiliated third party alleging that Customer's use in accordance with this Agreement and each applicable Addendum hereto during the applicable Subscription Term of Products and/or Services infringed such party's patent, copyright or trademark, or made unlawful use of such party's trade secret.

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

1.9   **"Product"** means Software or a Cloud Service, as applicable.

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

1.11   **"Reseller"** means a third party authorized by Elastic to promote and resell Subscriptions and/or Services.

1.12   **"Services"** means Consulting Services and/or Training Services, as applicable.

1.13   **"Software"** means Elastic software that is licensed for use on Customer's premises or in Customer's public cloud account 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.

1.14   **"Subscription"** means Customer's right, for a fixed period of time, to possess, use and/or access a Product and to receive associated Support Services, in each case, as set forth in the applicable Order Form and subject to the applicable Addendum.

1.15   "**Subscription Level**" means the level of a Subscription purchased by Customer. The level of the Subscription purchased by Customer determines the Eligible Features and Functions that Customer is entitled to use, and the specific Support Services that Customer is entitled to receive, if any, with respect to any Products included in the Subscription. Links to specific descriptions of the Subscription Levels for each Product are included in the applicable Addendum.

1.16   **"Subscription Term"** means the period of time for which a Subscription is valid, as further described in Section 8.1 of this Agreement.

1.17   **"Support Services"** means maintenance and support services for an applicable Product, if any, that are included in a Subscription, as more fully described in the applicable Support Services Policy.

1.18   **"Support Services Policy"** means Elastic's support services policy for a Product, as further described at a URL referenced in an applicable Addendum.

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

2   AGREEMENT SCOPE

2.1   Master Agreement. This Agreement is a master agreement that includes terms and conditions applicable to each Addendum. In order for Customer to purchase specific

Subscriptions and/or Services, Customer and Elastic must first execute an Addendum applicable to such Subscriptions and/or Services. Once executed by both parties, each Addendum becomes part of, and is subject to the terms and conditions of, this Agreement. Customer may then order the Subscriptions and/or Services covered by a given Addendum as set forth in Section 2.2 below.

2.2   Subscriptions and Services Orders. Orders for Subscriptions and/or Services may be placed by Customer through (1) the execution of Order Forms with Elastic or (2) issuance by Customer of a Qualifying PO, which will be deemed to constitute, for the purposes of this Agreement, the execution by Customer of the referenced Order Form. For non-U.S. Government Customers, each executed Order Form is incorporated by reference into, and shall be governed by the terms and conditions of, this Agreement. For U.S. Government Customers, this Agreement shall be made an addendum to the Government Contract or Order as provided in FAR 12.212(b).

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

2.4   Subscriptions and Services Purchased Through Resellers. RESERVED

3   PAYMENT AND TAXES

3.1   RESERVED

3.2   RESERVED

4   CONFIDENTIAL INFORMATION

4.1   RESERVED

4.2   RESERVED.

4.3   RESERVED

4.4   RESERVED

4.5   RESERVED

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5 WARRANTIES AND DISCLAIMER OF WARRANTIES

5.1 RESERVED

5.2 RESERVED

6 RESERVED

6.1 INFRINGEMENT CLAIMS

6.2 RESERVED

6.3 RESERVED

6.4 RESERVED

6.5 RESERVED

7 EXCLUSIVE REMEDY

RESERVED

8 LIMITATION OF LIABILITY

8.1 RESERVED

8.2 RESERVED

8.3 RESERVED

9 TERM AND TERMINATION

9.1 RESERVED

9.2 RESERVED

9.3 <u>Termination</u>.

U.S. Government Customers: Termination shall be governed by Federal Acquisition Regulation ("FAR") clause 52.212-4(l) and (m), and the Contract Disputes Act, 41 U.S.C. §§ 601-613.

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

10 GENERAL

10.1 <u>Alert Metadata (Endpoint Security Only)</u>. If Customer has deployed endpoint security, the Product(s) may provide Alert Metadata (defined below) to Elastic. Elastic uses Alert Metadata for threat analysis and mitigation, customer support, product management and improvement, and research and development. Information that is identifiable to an individual is removed or de-identified (i.e., anonymized or hashed) before being communicated to Elastic.

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Elastic does not share Alert Metadata with third parties. "**Alert Metadata**" is data derived from, or communicated to, the Product that is related to malicious or potentially malicious code, attacks or activity.

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

10.3   Assignment.

U.S. Government Customers: To the extent relevant and applicable, any assignment shall be subject to FAR 42.12 Novation and Change-of-Name Agreements, and FAR Clause 52.232-23, Assignment of Claims (JAN 1986).

10.4   RESERVED

10.5   RESERVED

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

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

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10.8   Feedback. Customer, Customer's Affiliates, and their respective agents, may volunteer feedback to Elastic, and/or its Affiliates, about the Products and/or Services ("**Feedback**"). Elastic and its Affiliates shall be irrevocably entitled to use that Feedback, for any purpose and without any duty to account. provided that, in doing so, they may not breach their obligations of confidentiality under Section 4 of this Agreement.

10.9   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.

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

10.11   Governing Law, Jurisdiction and Venue.

(a) **All U.S. Government Customers**: No matter where located, for all U.S. Government Customers this Agreement shall be governed by the Federal law of contracts.

(b) **RESERVED**

(c) **RESERVED**

(d) **RESERVED**.

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

10.13   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.

10.14   Notices. Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered in person or by e-mail, if acknowledged received by return e-mail or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required

postage, to the intended recipient at its address specified on an Order Form. Notices to Elastic may also be sent to legal@elastic.co. 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.

10.15   Product Metadata. The Product(s) may provide Product Metadata (defined below) to Elastic. Product Metadata does not include any Customer personal data or any Content that Customer processes or stores in connection with Customer's use of the Product. In addition, Customer may disable Product Metadata in the Software at any time. Elastic uses Product Metadata for security, support, product and operations management, and research and development. Elastic does not share Product Metadata with third parties. "**Product Metadata**" is statistical and other information about Customer's configuration and use of the Product(s), 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 feature usage.

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

10.17   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.

10.18   Entire Agreement; Amendment. This Agreement, together with any Order Forms executed by the parties, and the Support Services Policy, each of which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement. Execution of a scanned copy will have the same force and effect as execution of an original, and a scanned signature will be deemed an original and valid signature. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) an applicable Order Form (but only for the transaction thereunder), (ii) an applicable Addendum (including any exhibits, attachments and addenda thereto), (iii) this Agreement, and (iv) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Customer issues any purchase orders or similar documents in connection with its purchase of a Subscription and/or Services, it shall do so only for the purpose of Section 2.2(2) 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 Customer's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (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 Customer by their duly authorized representatives. The parties agree that the terms and conditions of this Agreement are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement. Any ambiguity shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language.

EXHIBIT B

ELASTIC SERVICES ADDENDUM

This **ELASTIC SERVICES ADDENDUM** (this "**Addendum**") is subject to, and hereby incorporated into, the Elastic Master Customer Agreement which has been previously entered into, or which is being entered into as of even date herewith, by Elastic and Customer (the "**Agreement**"). This Addendum sets forth additional terms and conditions related to Customer's purchase of Consulting Services and/or Training Services (including Private Training Services, Online Training Subscriptions and/or Public Training, each of which is defined below). Capitalized terms not defined in this Addendum shall have the meanings set forth in the Agreement.

1   CONSULTING AND TRAINING SERVICES

1.1   Service Orders.

(a) Customer may order Services by entering into an Order Form in accordance with the Agreement, each of which will become part of and be subject to this Agreement. Each Order Form will set forth the Services being purchased and the applicable Fees.

(b) Customer agrees that it will have a period of one (1) year from the start of the Period of Performance, as set forth on the applicable Order Form to consume the Services set forth on such Order Form (such period, the "**Services Period**"). Upon the expiration of the Services Period, Elastic will not be obligated to provide such Services, or provide a refund of any Fees paid under such Order Form.

(c) Elastic shall be responsible for any costs and expenses (including travel, equipment, meals and incidentals, or other related out of pocket expenses) incurred by Elastic and incidental to the performance of its obligations under this Addendum unless said Fees are set forth in an applicable Order Form or otherwise agreed to in writing by the parties.

(d) Services are non-transferable (except, with respect to Entitlements, as provided under Section 2.4 of this Addendum) and are only for Customer's internal, government purpose uses, and Customer may not use the Services to supply any consulting, support or training services to any third party.

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

1.2   Scheduling and Rescheduling

(a) Scheduling. Consulting Services, Private Training, and Public Training may be scheduled at the time of purchase, or at a later date, through contacting the Elastic Services group, provided that (i) Private Training Services to be provided at Customer's location must be scheduled for a minimum period equal to or greater than two (2) consecutive Days within the same work week, (ii) Consulting Services to be provided at Customer's location must be scheduled for a minimum period equal to or greater than four (4) consecutive Consulting Days within the same work week (i.e., Monday to Friday, excluding holidays), and (iii) Private Training or Consulting Services to

1

be provided remotely must be scheduled for a period equal to or greater than one (1)

(b) <u>Rescheduling</u>. Rescheduling of Consulting Services, Private Training, and Public Training must be done in writing. Private Training Services may not be rescheduled less than thirty (30) days prior to the scheduled commencement of Services, and Consulting Services and Public Training Services may not be rescheduled less than fourteen (14) days prior to the scheduled commencement of Services (each, the "**Rescheduling Deadline**"). Customer will not be entitled to credit back for Services that are rescheduled after the Rescheduling Deadline. Elastic may cancel or reschedule Public Training at its discretion. In the event of such cancellation or rescheduling, Customer will receive a credit that may be applied to future Public Training Services.

(c) <u>Reserved</u>.

(d) <u>Certification Exam Attempts</u>. If Customer's purchase includes Certification Exam Attempts, Certification Exam Attempts must be completed by the end of the Services Period or Training Subscription Term, as applicable.

(e) <u>Ask-the-Instructor Sessions</u>. From time to time, Elastic may offer Ask-the-Instructor Sessions for eligible Participants. Customer understands that any information provided through such Ask-the-Instructor Sessions is purely advisory in nature and is not intended as a type of support service or substitute for support services.

(f) <u>Online Course Access</u>. Participants generally will have at least fifteen (15) days from the date they first access an on-demand Online Course to complete it, though modules or hands-on labs within individual on-demand Online Courses may be subject to additional time restrictions on availability and access, as set forth in the user guide that is e-mailed to each Participant. For Online Training Subscriptions, Participant may only access a given Online Course once during the Training Subscription Term, unless renewed.

(g) <u>Personnel</u>. Elastic reserves the right, at its discretion, to assign personnel, and to use and assign personnel from Elastic Affiliates, to perform Services. Notwithstanding any provision to the contrary in the Agreement, Elastic reserves the right to use subcontractors to perform Public Training on Elastic's behalf.

1.3   <u>Customer Policies</u>. When Consultants are performing Services at a Customer location, Elastic shall procure that the Consultants conduct themselves in accordance with the standard health, safety and security policies of Customer applicable to its staff and/or visitors generally, and which are provided to Elastic in writing in advance. Customer agrees to provide written notice to Elastic of any applicable non-standard policies (for example, the requirement of security clearances, background checks or execution of any additional agreements) in advance of entering into an Order Form. For the avoidance of doubt, the parties agree that if Customer or

any Customer Affiliate requires any Consultant entering Customer's premises to sign any non-disclosure agreement, agreement addressing proprietary rights, or other, similar document as a condition of being permitted to enter Customer's premises for the purpose of performing Services (any such document or agreement, an "**Individual NDA**"), that such Individual NDA will be deemed void, ab initio, and that the provisions of this Agreement exclusively govern Consultant's activities while on Customer's premises, and that Customer will look solely to Elastic to satisfy its obligations hereunder, and not to any Consultant

1.4   Elastic Participant Cloud Account. To obtain access to Materials and participate in Training Services, each Participant shall be required to register for a Participant Account. Each participant shall be responsible for complying with the terms of use applicable to their respective Participant Account and for maintaining the security of the log-in credential for their Participant Account. Customer and/or the Participant shall immediately notify Elastic of any unauthorized use of a Participant Account, or any other breaches of security of which Customer or Participant becomes aware.

2   PARTICIPANT AND CUSTOMER OBLIGATIONS

2.1   General. Customer shall ensure that all Participants and other persons booked to receive Services: (i) are appropriately qualified to participate; (ii) for scheduled Services, arrive on time and in any event not later than twenty minutes after scheduled start time; (iii) do not conduct themselves in a manner that could reasonably be considered contrary to Customer's applicable employment rules and policies; and (iv) do not share access to the Services or the Materials (defined in Section 4.2 below) with any third party for any reason. Consultants shall have the right in their reasonable discretion to exclude from a training session any person in breach of this Section 2.1.

2.2   **Consulting Services.**

2.3   (a) Access, Information, Materials and Cooperation. For Consulting Services, Customer agrees to provide the Consultant with such cooperation, materials, information, access and support reasonably required to allow Elastic to successfully provide the Services, and as may be set forth in the Services Description. Customer understands and agrees that Elastic's obligations hereunder are expressly conditioned upon Customer providing such cooperation, materials, information, access and support. To the extent that Customer makes available secure access to Customer's systems, Customer shall ensure such access complies with any data privacy laws applicable to Customer and Customer's security policies.

(b) Workplace Standards and Hours. Customer agrees to ensure the Consultants performing Consulting Services at a Customer location are provided reasonable working conditions and not required to work unreasonable hours. Without limiting the generality of the foregoing, Customer shall provide a safe and adequate work space and environment, with reasonable lighting and access to appropriate resources and facilities, and Customer acknowledges and agrees that Elastic will not: permit (i) a Consultant to work more than

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five (5) consecutive days without a day off; (ii) a Consultant to work more than five (5) consecutive days without the opportunity to travel to their location of residence; (iii) a Consultant to work more than ten (10) hours in any one day; or (iv) a Consultant to work between the hours of 12:00 am and 6:00 am, local time. In addition, Customer acknowledges and agrees that Elastic requires that Consultants are granted at least one (1) hour for a meal for every five (5) hours worked, and one (1) fifteen (15) minute break every four (4) hours worked.

(c) Out of Scope Services and Items. Elastic shall not be responsible for any services or items that are not expressly included in the Performance Work Statement or similar document, which shall be the responsibility of Customer.

2.4   Private Training Services: To be discussed/negotiated at the ordering level

2.5   Online Training Subscriptions. If the Participant designated in an Online Training Subscription is an employee of Customer and is unable to attend Customer may, with written consent of Elastic, designate another individual as Participant for the remainder of the term of the Online Training Subscription. Customer shall be responsible for its designated Participant's compliance with the Master License Agreement and this Exhibit and for any acts or omissions of Participant in violation of the Master License Agreement and/or this Exhibit.

2.6   Training Services Laboratory Set Up: To be discussed/negotiated at the ordering level

3   MONITOR RIGHTS

3.1   Elastic shall have the right to verify Participant's right to access or use Training Services and monitor Participant's progress and access to and use of the Training Services for compliance with any applicable limitations on Customer's and/or Participant's use thereof. In the event any such monitoring reveals that Customer or Participant has used the Training Services in excess of the limitations set forth in this Agreement, Customer shall promptly pay to Elastic an amount equal to the difference between the fees actually paid and the fees that Customer should have paid to remain in compliance with such limitations. Elastic may also request no more than once per calendar year that Customer perform an appropriate self-audit to validate and then certify in writing that its Participants have not shared their Participant Account credential with others. Without prejudice to Elastic's other rights, Elastic may in its sole discretion disable any Participant Account credentials revealed in such self-audit to have been shared.

4   OWNERSHIP OF WORK PRODUCT AND OTHER MATERIALS

4.1   Work Product. In the course of performing Services, Elastic may create software or other works of authorship (collectively "**Work Product**"). Subject to Customer's ownership interest in, and Elastic's obligations with respect to, Customer's Confidential Information (which will not under any circumstances be deemed to constitute Work Product), Elastic shall own all right title and interest in and to all Work Product, including all intellectual property rights therein and thereto. If any Work Product is delivered to Customer pursuant to or in connection with the

performance of Consulting Services ("**Work Product Deliverable**"), Elastic hereby grants to Customer a royalty-free, perpetual, worldwide license, without the right to grant or authorize sublicenses, to use such Work Product Deliverable solely for Customer's own internal business purposes, provided that where such Work Product Deliverable is a derivative work of Elastic branded Software ("**Software**"), Customer is hereby granted a license to such Work Product Deliverable on the terms, and for the same period of time as, Customer's license to the Software from which such Work Product Deliverable was derived ("**Original Software**"). Customer may allow its third party service providers to exercise the foregoing rights on Customer's behalf. Customer may not distribute or otherwise transfer such Work Product Deliverable to any third party, unless Customer is permitted to do so under the license applicable to the Original Software. Nothing in this Agreement shall be deemed to prohibit Elastic from using for any purpose any general knowledge, skills, techniques or methods it learns in the course of performing Services.

4.2   Other Materials. Customer agrees and acknowledges that Customer is not obtaining any intellectual property right in or to any other materials, including, without limitation, training course materials such as online lectures, speeches, video lessons, quizzes, presentation materials, homework assignments, programming assignments, code samples, practice exams, and other educational materials, provided by Elastic to Customer in connection with the provision to Customer of Services (collectively, "**Materials**"), other than the right to access, download, internally use and display the Material as necessary to utilize the Services that Customer has purchased. Customer shall be entitled to keep and use all Materials provided by Elastic to Customer, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to Elastic. In particular and without limitation, Materials may not be copied electronically or otherwise (except for purposes of internal distribution within Customer's organization and for archival purposes), modified including translated, re-distributed, disclosed to third parties (other than Customer Affiliates and Contractors providing services to Customer that do not compete with the Services), lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way. All Elastic trademarks, trade names, logos and notices present on the Materials shall be preserved and not deliberately defaced, modified or obliterated except by normal wear and tear. Customer shall not use any Elastic trademarks without Elastic's express written authorization.

5   INDEMNITY

5.1   Reserved.

6   ADDITIONAL DEFINITIONS

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

6.1   "**Ask-the-Instructor Session**" means a virtual session offered by Elastic to eligible Participants for the purpose of facilitating live discussions on relevant topics and answering Participants' questions.

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6.2   "**Certification Exam Attempt**" means participant's right, subject to the certification program terms at https://www.elastic.co/legal/certification-program-agreement, to attempt an Elastic certification exam.

6.3   "**Consultant**" means a member of Elastic's Consulting Services or Training Services staff, as applicable..

6.4   "**Consulting Services Package**" means a specific package of Consulting Services that may be purchased by Customer, as described in the Services Description..

6.5   "**Day**" means eight (8) billable hours of consulting, training and/or report preparation during a calendar day occurring within a work week, except in jurisdictions where a work day is legally defined as fewer than (8) hours, in which case a Day is equal to the legally defined work day.

6.6   "**Entitlements**" means the resources associated with the Training Subscription Level purchased by Customer as set forth at https://www.elastic.co/training/subscriptions.

6.7   "**Fees**" means the fees to be paid by Customer to Elastic for Service Packages and/or Training Services.

6.8   "**Online Course**" means an on-demand online training course provided by Elastic to Participant via the Training Portal, including any hands-on lab and associated reference Materials that may be offered as part of such course. Online Courses may be included as part of Consulting Services Packages, Online Training Subscriptions, Private Training, or Public Training.

6.9   "**Online Training Subscription**" means the right for a Participant to access or use, for the Training Subscription Term, the Entitlements with respect to the applicable Training Subscription Level set forth in the applicable Order Form.

6.10   "**Participant**" means a single, named individual designated by Customer to participate in Services.

6.11   "**Participant Account**" means an individual user account at https://cloud.elastic.co/registration.

6.12   "**Private Training**" means Elastic's private training services regarding the use of one or more Products, provided to Customer privately on-site or remotely by or on behalf of Elastic.

6.13   "**Public Training**" means Elastic's public training services regarding the use of one or more Elastic Products available for general enrollment provided to Customer live, in-person at public training facilities or remotely live or on-demand.

6.14   "**Services Description**" means the document located at https://www.elastic.co/services_policy that describes the specific details of the scope of each Consulting Services Package available for purchase by Customer from Elastic.

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6.15　"**Training Subscription Level**" means the level of an Online Training Subscription purchased by Customer, as indicated on an applicable Order Form.

6.16　"**Training Subscription Term**" means the period commencing and expiring on the respective start and end dates set forth on the Order Form for the applicable Online Training Subscription.

EXHIBIT C

ELASTIC SOFTWARE SUBSCRIPTION ADDENDUM

This **ELASTIC SOFTWARE SUBSCRIPTION ADDENDUM** (this "**Addendum**") is subject to, and hereby incorporated into, the Elastic Master Customer Agreement which has been previously entered into, or which is being entered into as of even date herewith, by Elastic and Customer (the "**Agreement**"). This Addendum sets forth additional terms and conditions related to Customer's purchase of one or more Self-managed Subscriptions from Elastic. Capitalized terms not defined in this Addendum shall have the meanings set forth in the Agreement.**SOFTWARE LICENSES AND RESTRICTIONS**

1.1   <u>License Grants</u>. Subject to the terms and conditions of the Agreement , including complete payment of any and all applicable Subscription fees, Elastic grants to Customer during the applicable Subscription Term, and for the restricted scope of this Addendum:

(i) in the case of a Gold or Platinum Subscription, a License to the Eligible Features and Functions of the Software that are applicable to the Subscription Level that Customer has purchased, for the number of Billable Nodes and for the specific Project for which Customer has purchased such Subscription. The Subscription Level, the number of Billable Nodes and specific Project for which Customer has purchased such Subscription, are set forth on the applicable Order Form.

(ii) in the case of an Enterprise Subscription, a License to the Eligible Features and Functions of the Software that are applicable to an Enterprise Subscription, for the number of Resource Units for which Customer has purchased such Enterprise Subscription. The number of Resource Units for which Customer has purchased an Enterprise Subscription is set forth on the applicable Order Form.

1.2   <u>License Key, Delivery and Acceptance</u>. Promptly following execution of an applicable Order Form, Elastic will deliver to Customer a License Key or ISO file that is required in order for Customer to use the Software in accordance with the rights granted in Section 1.1 of this Addendum. For purposes of the applicable Order Form, the Software will be deemed to have been delivered to Customer upon provision of such License Key or ISO file, and the Software is deemed to be accepted by Customer upon delivery.

1.3   <u>Reservation of Rights; Restrictions</u>. As between Elastic and Customer, Elastic owns all right title and interest in and to the Software and any derivative works thereof, and except as expressly set forth in Section 1.1 of this Addendum, no other license to the Software is granted to Customer by implication, estoppel or otherwise. Customer agrees not to: (i) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software or any portion thereof to human-readable form, except and only to the minimum extent permitted by applicable law, (ii) prepare derivative works from, modify, copy or use the Software in any manner except as expressly permitted herein; (iii except as expressly permitted in Section 1.1 of this Addendum, transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software in whole or in part to any third party; (iv) except for Customer's internal business purposes, or as otherwise may be expressly permitted on an applicable Order Form or in another written agreement signed by the parties, use the Software for providing any time-sharing services, software-as-a-service or "SaaS" offering, service bureau services or as part of an application

services provider or other service offering; (v) circumvent the limitations on use of the Software that are imposed or preserved by any License Key, (vi) alter or remove any marks and notices in the Software; (vii) make available to any third party (other than Contractors) any analysis of the results of operation of the Software, including benchmarking results, without the prior written consent of Elastic; (ix) access or use Elastic-Hosted Infrastructure 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 (ix) interfere with or disrupt the integrity or performance of any Elastic-Hosted infrastructure.

1.4   <u>Third Party Open Source</u>. The Software may contain or be provided with third party open source libraries, components, utilities and other open source software (collectively, "**Third Party Open Source Software**"), which Third Party Open Source Software may have applicable license terms as identified on a website designated by Elastic (currently, https://www.elastic.co/third-party-dependencies) or otherwise provided with the Software or Documentation. Notwithstanding anything to the contrary herein, use of the Third Party Open Source Software shall be subject to the license terms and conditions applicable to such Third Party Open Source Software, to the extent required by the applicable licensor (which terms shall not restrict the license rights granted to Customer hereunder, but may contain additional rights).

1.5   <u>RESERVED</u>

1.6   <u>RESERVED</u>

1.7   <u>Government Rights</u>. The Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires the Software and/or the Documentation, the same shall be subject to this Addendum, as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Software under this Agreement and in any Subcontract under which the Software and Documentation are acquired or licensed.

1.8   <u>Post Termination or Expiration.</u> Upon termination or expiration of the Agreement or any applicable Subscription or Order Form, for any reason, Customer shall promptly cease the use of the Software and Documentation and destroy (and certify to Elastic in writing the fact of such destruction).

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1.9   Malicious Code. Elastic warrants that at the time the Software is made available for download; it will be free of Malicious Code.

2   SUPPORT SERVICES

2.1   Provision of Support Services. During an applicable Subscription Term, Elastic will provide Customer with Support Services in accordance with the Support Services Policy:

(a) in the case of Gold and Platinum Subscriptions, for the covered Project(s), up to the applicable number of Billable Nodes included in the Subscription; and

(b) in the case of an Enterprise Subscription, up to the number of Resource Units included in the Subscription. Support Services will be delivered to Customer 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 Customer's facilities.

2.2   Third Party Contractors. At Customer's written request to the Elastic support desk (e-mail sufficient if receipt confirmed or acknowledged), Elastic will provide the Support Services to one or more Contractors, solely in connection with such Contractors' provision of services to Customer, and provided that (i) such Contractors do not offer Software as part of any software-as-a-service, (ii) Customer shall remain responsible to Elastic for the compliance of such Contractors with the terms and conditions of the Agreement and this Addendum, and (iii) such Contractors are contractually bound to obligations that reasonably protect Elastic's intellectual property and Confidential Information.

2.3   Restrictions. Support Services are provided to Customer solely for Customer's internal use (which includes use by Customer Affiliates, and, subject to Section 2.2 above), and are subject to applicable quantitative limitations on (i) the number of Billable Nodes and/or Resource Units set forth on the applicable Order Form(s), and (ii) the number of support contacts in the Support Services Policy. For the avoidance of doubt, the foregoing internal use restriction is not intended to prohibit Customer from using the Support Services for a Project in which Software is used in connection with or as part of a Customer website or Customer's own software-as-a-service ("**SaaS**") offering, provided that any such SaaS offering must include substantial, additional value-added software application features and functions, in addition to the features and functions of the Software. In addition, Customer 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 Customer Affiliates; or (b) use Support Services to obtain support (i) for its use of Software in a Project for which no Subscription has been purchased or (ii) under a higher Subscription Level for its use of Software in a Project for which Customer has purchased a lower Subscription Level. Customer agrees that any knowing failure to comply with the terms of this Section will be deemed a material breach of this Agreement.

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3 ADDITIONAL DEFINITIONS

3.1 "**Addressable**" with respect to RAM means the quantity of RAM that benefits the execution of the applicable software.

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

3.3 "**Billable Nodes**" means, with respect to a Subscription, a number that is the greater of (i) the number of Nodes running across all Projects covered by the Subscription or (ii) the total GB of RAM Addressable by all Nodes across all Projects covered by the Subscription divided by 64, with any fractional remainder being rounded up to the next whole number. Nodes deployed in a Non-production Environment are not counted as Billable Nodes.

3.4 "**Contractor**" means any third-party contractor performing services on Customer's behalf.

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

3.6 "**License**" means a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) solely for Customer's internal business operations to (i) install and use, in object code format, the Software, (ii) use, and distribute internally a reasonable number of copies of the Documentation, provided that Customer must include on such copies all marks and notices; (iii) permit Contractors and Customer's Affiliates to use the Software and Documentation as set forth in (i) and (ii) above, provided that such use by Contractors must be solely for Customer's benefit, and Customer shall be responsible for all acts and omissions of such Contractors and Affiliates in connection with their use of the Software that are contrary to the terms and conditions of this Agreement.

3.7 "**License Key**" means an alphanumeric code that enables use of software.

3.8 "**Malicious Code**" means any code that is designed to harm, or otherwise disrupt in any unauthorized manner, the operation of Customer'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 of 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 Customer.

3.9 "**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 Documentation.

3.10 "**Non-production Environment**" means an environment such as development, staging, or quality assurance, where software is not used for production purposes.

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3.11   "**Project**" means a specific Customer use case for the Software, with Nodes being deployed for use in a logical grouping of functionality to support such use case.

3.12   "**Resource Units**" means, with respect to an Enterprise Subscription, a number that is equal to the total GB of RAM Addressable by all Billable Enterprise Software deployed by Customer in connection with the Enterprise Subscription, divided by 64, with any fractional remainder being rounded up to the next whole number.

3.13   "**Support Services Policy**" means Elastic's support services policy for Software Subscriptions 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 diminish the level of Support Services in any material respect 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 Customer upon request. The Support Services Policy is hereby incorporated into these terms and conditions by this reference.