Elastic Software | Elasticsearch

1.   Definitions

In this section:

(a)   **Contractor** means any third-party contractor performing services on the Customer's behalf;

(b)   **Documentation** means the end user documentation published by Elastic at https://www.elastic.co/guide/index.html (as updated by Elastic from time to time);

(c)   **Elastic** means Elasticsearch Pty Ltd;

(d)   **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;

(e)   **Eligible Features and Functions** means those features and functions of an Elastic Product purchased by the 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. Elastic may from time to time modify the Eligible Features and Functions of an Elastic Product during the Services Term, but shall not materially reduce the functionality thereof;

(f)   **License** means a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorise sublicenses) solely for the Customer's internal business operations to:

(1)   install and use, in object code format, the Software; and

(2)   use, and distribute internally a reasonable number of copies of the Documentation, provided that the Customer must include on such copies all applicable marks and notices;

(g)   **License Key** means an alphanumeric code that enables use of software;

(h)   **Product** means Software;

(i) **Software** means Elastic software that is licensed for use on the Customer's premises or in the Customer's public cloud account; and

(j) **Support Services** means maintenance and support services for the applicable Product(s) (if any), as described in this Proposal.

2. License

Elastic grants to the Customer during the applicable Services Term a License to the Eligible Features and Functions of the Software, for the number of units set out in the Proposal.

3. Restrictions

Elastic owns all right, title and interest in and to the Software and any derivative works thereof, and except as expressly set forth in clause 2 above, no other license in and to the Software is granted to the Customer. The Customer agrees not to:

(a) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software or any portion thereof to human-readable form, except and only to the extent permitted by applicable law;

(b) prepare derivative works from, modify, copy or use the Software in any manner except as expressly permitted by these CTP Terms;

(c) except as expressly permitted by clause 2, transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software in whole or in part to any third party;

(d) except for the Customer's internal business purposes, or as otherwise may be expressly permitted in the Proposal, use the Software for 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;

(e) circumvent the limitations or use of the Software that are imposed or preserved by any License Key;

(f) alter or remove any marks or notices in the Software;

(g)   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;

(h)   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 purposes of designing and/or developing any competitive services; or

(i)   interfere with or disrupt the integrity or performance of any Elastic-Hosted Infrastructure.

4.   Confidential Information

(a)   The Customer acknowledges that they may obtain information relating to products (such as goods, services and software) of Elastic, which is of a confidential or proprietary nature (**Confidential Information**). Elastic Confidential Information includes materials and all communications concerning Elastic's business and marketing strategies, including but not limited to employee and customer lists, customer profiles, project plans, design documents, product strategies and pricing data, research, advertising plans, leads and sources of supply, development activities, design and coding, interfaces with the Products, and anything else provided by Elastic in connection with the Products and/or Support Services provided under this Proposal, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even if specific designation as Confidential Information has not been made. Confidential Information also includes:

(1)   any notes, summaries, analyses of the foregoing that are prepared by the receiving party; and

(2)   these CTP Terms in relation to Elastic Software.

(b)   The Customer shall not use Elastic's Confidential Information other than as necessary to access and use the Services provided under this Proposal, nor shall the Customer disclosure any such Confidential Information to a third party without Cenitex's prior written consent.

(c)   The obligations of confidentiality in this clause 4 shall not apply to information which:

(1)   has entered the public domain or is otherwise publicly available;

(2)   prior to disclosure was already in the receiving party's possession without restriction, as evidenced by appropriate documentation;

(3)   subsequent disclosure is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information; or

(4)   was developed by the receiving party without any use of any of the Confidential Information as evidenced by appropriate documentation.

(d)   Notwithstanding anything to the contrary in these Elastic CTP Terms, the Customer may disclose Elastic's Confidential Information in order to comply with applicable law and/or an order from a court or other governmental body of competent jurisdiction, and, in connection with compliance with such an order only, provided that the Customer:

(1)   unless prohibited by law, gives Cenitex prior written notice to such disclosure if the time between that order and such disclosure reasonably permits or, if time does not permit, gives the other party written notice of such disclosure promptly after complying with that order; and

(2)   fully cooperates with Elastic, at the Elastic's cost and expense, in seeking a protective order, or confidential treatment, or taking other measures to oppose or limit such disclosure.

5.   Export

(a)   The Customer acknowledges that the Products, Support Services, and technologies related thereto are subject to the export control laws, rules,

regulations, restrictions and national security controls of the United States and other applicable foreign agencies (**Export Controls**) and agrees to comply fully with those Export Controls.

(b)   The Customer 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 any applicable Export Controls. 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.

6.   Product Usage Data

(a)   The Customer acknowledges that the Product(s) may provide Product Usage Data to Elastic. Product Usage Data 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 Usage Data in the Software at any time.

(b)   Product Usage Data will be processed in accordance with Elastic's Product Privacy Statement at https://www.elastic.co/legal/product-privacy-statement. Elastic uses Product Usage Data for security, support, product and operations management, and research and development. Elastic does not share Product Usage Data with third parties.

(c)   In this clause 6, **Product Usage Data** means 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.

7.   Threat Intelligence Data (Endpoint Security Only)

(a)   If the Customer has deployed endpoint security, the Customer acknowledges that the endpoint security Product(s) may provide Threat Intelligence Data to Elastic. Elastic uses Threat Intelligence Data 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. Elastic does not share Threat Intelligence Data with third parties.

(b)   In this clause 7, **Threat Intelligence Data** means data derived from, or communicated to, the Product that is related to malicious or potentially malicious code, attacks or activity.

8.   Audit Rights

(a)   The Customer acknowledges agrees that, unless such right is waived in writing by Elastic, Elastic shall have the right to audit Customer's use of the Software for compliance with any limitations on Customer's use of the Software that are set forth in these CTP Terms.

(b)   In the event any such audit reveals that the Customer has used the Software in excess of the limitations set forth in the Proposal and these Elastic CTP Terms, the Customer agrees to promptly pay an amount equal to the difference between the fees actually paid and the fees that the Customer should have paid to remain in compliance with such limitations.