

ELASTIC PROJECTS
ABSTRACT ORDER FORM

This ABSTRACT ORDER FORM (the “**Order Form**”) is effective as of the Order Form Effective Date listed below between Elastic Projects, Inc., a Delaware corporation with offices at 255 Golden Gate Ave., San Francisco CA, 94102 (“**Elastic Projects**”, “**we**”, “**our**”, or “**us**”) and AppDynamics LLC, a Delaware limited liability company with offices at 303 Second Street, North Tower, 8th Floor, San Francisco, CA 94107 (the “**Customer**”). This Order Form and Customer’s use of the Services is governed by the Elastic Projects’ enterprise terms of service attached herein, by and between the parties and entered into as of the last date such document is signed by either party (“**Enterprise Terms of Service**”). The Enterprise Terms of Service contains, among other things, warranty disclaimers, liability limitations and use limitations. Any terms capitalized and not defined herein shall have the meanings ascribed to them in the Enterprise Terms of Service. The “**Agreement**” between the parties consists of: (i) this Order Form; and (ii) the Enterprise Terms of Service.

Customer	APPDYNAMICS LLC (“ Customer ,” “ you ,” or “ your ”)							
Customer Information	<i>Billing Address</i>	<i>City</i>	<i>State/Prov</i>	<i>Country</i>	<i>Zip/Postal</i>			
	303 2nd Street, North Tower, 8th floor	San Francisco	CA	USA	94107			
	<i>Representative Name</i>	<i>Phone #</i>	<i>Email Address</i>					
	<i>Accounting Contact</i>	<i>Phone #</i>	<i>Email Address</i>					
	Accounts Payable		accounts payable@appdynamics.com					
Order Form Effective Date	The last date this Order Form is signed by either party below (the “ Effective Date ”).							
Services	Abstract Enterprise Plan							
Subscription Period	One (1) year (the “ Initial Subscription Period ”, collectively with any renewal terms, the “ Subscription Period ”).							
Automatic Renewal	<input type="checkbox"/> Yes . The Agreement will automatically renew for additional one (1) year terms (“ Renewal Period ”) unless a party provides the other at least thirty (30) days’ prior written notice of its intention not to renew.							
	<input checked="" type="checkbox"/> No . The Agreement will renew only upon the mutual written agreement of the parties.							
Number of Authorized Users	25 Authorized Users							
Fees	\$425 USD per Authorized User per year. Fees must be paid within 30 days of invoice receipt. Acceptable payment methods include bank transfer (fees may apply), or credit card via online portal. Bank transfer instructions are included on each invoice; Customer is responsible for reimbursing Elastic Projects for all fees charged by the applicable bank(s) as a result of such transfer.							
Special Terms	None.							

This Order Form is signed by duly authorized representatives of the parties and is effective as of the last date below.

ELASTIC PROJECTS, INC.	AppDynamics LLC
Signed by:	Signed by:
Signature: <u>Cassie McGruder</u>	Signature: <u>George Karamanos</u>
Print Name: <u>Cassie McGruder</u>	Print Name: <u>George Karamanos</u>
Print Title: <u>VP Finance</u>	Print Title: <u>General Counsel</u>
Date: <u>January 13, 2020</u>	Date: <u>January 13, 2020</u>

ENTERPRISE TERMS OF SERVICE

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **The Services.**

1.1. **Subscriptions.** Subject to Customer's compliance with this Agreement, we will provide you with access to and use of our version control and design workflow management platform as well as downloadable software that facilitates the use of the platform (collectively, the "**Services**"). Business terms related to your subscription to access and use the Services will be contained on one or more ordering documents executed by the parties and referencing this Agreement (each an "**Order Form**"), the first of which this Agreement is attached to. Subscriptions commence on the date that we make the Services available to Customer and continue for the Subscription Period (as stated on the applicable Order Form).

1.2. **Support.** Elastic Projects will use commercially reasonable efforts to provide basic technical support for the Services to Customer via email ("**Support Services**").

1.3. **Authorized Users.** Individuals authorized by Customer to access and use the Services (each an "**Authorized User**") may upload, submit, post, create, share, or otherwise make available through the Services: (a) videos, images, music, comments, questions, documents, spreadsheets, design files, and any other content or materials submitted, posted, or otherwise made available by Customer and its Authorized Users ("**User Content**"), including the names, voice, and/or likeness contained in the User Content; and (b) information relating to identified or identifiable natural persons (e.g. for the purposes of logging into the Services) ("**Personal Data**"). Collectively, User Content and Personal Data will be "**Customer Information**". Customer will have the sole right and responsibility for managing its and its Authorized Users' access to the Services and use of the Customer Information. For example, Customer may provision or deprovision access to the Services, enable or disable third party integrations, manage permissions of Authorized Users (e.g. giving certain Authorized Users administrative privileges), manage retention and export settings, transfer, assign, or consolidate organizations, and so on. Customer will also (i) inform Authorized Users of all of Customer's own policies and practices that are relevant to the Authorized Users' use of the Services and of any settings within the Services that may impact the processing of Customer Information; and (ii) obtain all rights, permissions and consents from Authorized Users and other Customer personnel or contractors that are necessary (x) to grant the rights and licenses set forth in this Agreement, and (y) for the lawful use and transmission of Customer Information and operation of the Services. Customer is responsible for all Authorized Users' login credentials, regardless of whether such Authorized User is an administrator or otherwise. Accordingly, you are responsible for all resulting damages, losses, or liability if usernames and passwords are not kept confidential by you or your Authorized Users, including for actions taken on the Services by unauthorized third-parties logging into and accessing the Services through Authorized Users' accounts.

1.4. **Early Release and Beta Products.** Occasionally, we look for customers to help us test new services or new features of our existing services. If we wish for you to test early release or beta features/services, we will either request whether you would like to test such early release or beta features/services in writing (email shall suffice) or these features will simply be identified within the Services as "beta" or "pre-release," or "early-release" (or words or phrases with similar meanings) (each, an "**Early Release Product**") and you (i.e., your Authorized Users that you give account management capabilities to) will have the option to either use them or refrain from using them. If you choose to use an Early Release Product, you understand and agree that Early Release Products are made available on an "as is," and "as available" basis and, to the extent permitted under applicable law, without any warranties, indemnities, or contractual commitments of any kind.

2. **Use of the Services and Restrictions.**

2.1. **License to Use and Access.** For the duration of the subscription, Elastic Projects grants to Customer a non-exclusive, non-transferable license to access and use, and to permit Authorized Users to access and use, the Services in accordance with this Agreement and solely for the Customer's own internal business purposes. To the extent that we may make software components available, via app stores or other channels, as part of the Services, we grant to Customer a non-sublicensable, non-transferable, non-exclusive, limited license for Customer and its Authorized Users to use the object code version of these components, but solely as necessary to use the Services and in accordance with this Agreement.

2.2. **Acceptable Use Policy.** Customer agrees, and will ensure that all Authorized Users agree, to comply with Elastic Project's acceptable use policy, the current version of which is located at <https://www.goabstract.com/acceptable-use-policy/> ("**Acceptable Use Policy**"); which may be updated by us from time to time by posting an updated version to the forgoing URL. The Acceptable Use Policy may be modified by Elastic Projects from time to time by posting a notice on the Service, sending Customer an email or using some other means as is appropriate given the updated terms and the significance of the changes made. If Customer believes

such modifications impose an undue burden or otherwise diminish the value of the Service, it may terminate this Agreement.

2.3. **Restrictions on Customer Information.** Customer is responsible for the content of any Customer Information and the way Customer and its Authorized Users choose to use the Services to store or process any Customer Information. Customer is therefore also solely responsible for ensuring compliance with all applicable laws that may apply to Customer Information, including but not limited to privacy laws. Unless otherwise agreed to in writing by both parties, Customer may not submit any Customer Information that includes a social security number, passport number, driver's license number, or similar identifier, credit card or debit card number, or any other information which may be subject to specific data privacy and security laws including, but not limited to, the Gramm-Leach-Bliley Act (GLBA), the Health Insurance Portability and Accountability Act (HIPAA), the Health Information Technology for Economic and Clinical Health Act (HiTECH), the Family Educational Rights and Privacy Act of 1974 (FERPA), or the Children's Online Privacy Protection Act (COPPA), or any other data which is considered to be sensitive. The Services are also not intended for and should not be used by anyone under the age of 13. Customer must ensure that all Authorized Users are over 13 years old. We do not make any representations as to the adequacy of the Service to process your Customer Information or to satisfy any legal or compliance requirements which may apply to your Customer Information, other than as described herein.

2.4. **License Restrictions.** Customer agrees that it will not, and will not allow third parties or Authorized Users to, directly or indirectly (a) modify, translate, copy or create derivative works based on the Services, (b) reverse assemble, reverse compile, reverse engineer, decompile or otherwise attempt to discover the object code, source code, non-public APIs or underlying ideas or algorithms of the Services, except as and only to the extent this restriction is prohibited by law, (c) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party, (d) remove or obscure any copyright, trademark or other proprietary notices, legends or Elastic Projects branding contained in or on the Services, (e) use the Services in any way that knowingly violates any applicable federal, state, local or international law or regulation, (f) attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Dashboard, or (g) use or access the Services to build or support and/or assist a third party in building or supporting products or services competitive to the Services. Customer also agrees to comply, and will ensure that its Authorized Users comply, with any usage limitations of the Services contained on the Order Form.

2.5. **Responsibility.** Customer must comply with this Agreement and is fully responsible for Authorized Users' compliance with this Agreement. To the extent permitted under applicable law, we take no responsibility and assume no liability for any Customer Information that Customer or any Authorized User or third-party submits, posts, or otherwise makes available through the Services. Customer acknowledges and agrees that we are acting only as a passive conduit for Customer's and its Authorized Users' online distribution of such Customer Information, except that we may review all conduct of Authorized Users in the Services, including the content of Customer Information, for the purpose of checking compliance with the terms of this Agreement, but we have no obligation to do so. If we believe there is a violation of this Agreement that can be remedied by Customer's removal of certain Customer Information, we will, in most cases, ask Customer to take direct action rather than intervene. However, we reserve the right to take further action (including suspending your use of or access to the Services or removing certain Customer Information), when we deem it reasonably appropriate if Customer does not take suitable action itself, or if we believe Customer is violating applicable law or there is a credible risk of harm to us, the Services, Authorized Users, or any of our other customers. For example, if we reasonably believe that your Customer Information violates the Acceptable Use Policy or otherwise infringes on the intellectual property rights of any third party, we reserve the right to remove such Customer Information from the Services and/or suspend your access to the Services.

3. **Payment Obligations.**

3.1. **Fees.** Customer will pay for access to and use of the Services as set forth in the Order Form ("**Fees**"). All Fees shall be paid in U.S. dollars. Payment obligations are non-cancelable and, except as expressly stated in this Agreement, non-refundable. We may modify our Fees or introduce new fees in our sole discretion; Customer understands that revised or new fees may be required by changes in our business or offerings. Any new or revised fees will only become effective upon the renewal of the Initial Subscription Period or then-current Renewal Period (as stated on the applicable Order Form).

3.2. **Payment.** We will invoice you for the Fees in accordance with the Order Form. Customer agrees to pay all invoices submitted in accordance with this Agreement or the Order Form within sixty (60) days after the invoice date. All information that you provide in connection with a purchase or transaction or other monetary transaction with the Services must be accurate, complete, and current.

3.3. **Taxes.** Fees stated on the Order Form are exclusive of any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Customer will be responsible for paying all Taxes associated with its purchases,

except for those taxes based on our net income.

3.4. **Overdue Fees.** If you fail to pay any Fees in accordance with this Section 3, we may suspend your access to the Services pending payment of such overdue invoices; provided that we give you notice of such non-payment and fifteen (15) days (from the date of such notice) to remit the overdue Fees in full. If Customer believes that we have billed you incorrectly, Customer must contact us no later than sixty (60) days after receiving billing statement in which the error or problem appeared, in order to receive an adjustment or credit.

3.5. **Adding Authorized Users.** Authorized Users that are given administrative permission by Customer may add Authorized Users at any time through the Services or by contacting us. Upon adding an Authorized User, we will invoice you for such Authorized User at the same price stated in the applicable, then-current Order Form at the pro-rated rate for the remainder of the then-current Initial Subscription Period or Renewal Period (also as stated on the Order Form). Customer agrees to pay such invoices in accordance with Section 3.2 above. The number of Authorized Users purchased cannot be decreased during the Subscription Period (as stated on the Order Form); the number of Authorized Users purchased may only be decreased upon renewal.

3.6. **New Services.** During the Subscription Period (as stated on the Order Form) we may offer new services or modules that are not included on your current Order Form; you may choose to purchase new services or modules under a new Order Form but will not be required to do so.

4. **Term and Termination.**

4.1. **Agreement Term.** This Agreement will commence on the Agreement Effective Date and remain effective until terminated in accordance with the terms of the Agreement or until all Order Forms have expired or been terminated. The Subscription Period of each Order Form shall be as stated on such Order Form.

4.2. **Termination for Cause.** Either party may terminate this Agreement upon written notice to the other party if the other party materially breaches this Agreement and such breach is not cured within thirty (30) days after the non-breaching party provides written notice of such breach. Unless otherwise agreed in writing by the parties, termination under this Section 4.2 will terminate all Order Forms.

4.3. **Effect of Termination.** If Customer terminates this Agreement as a result of Elastic Project's uncured breach, we will refund any unused, prepaid Fees for the remainder of the then-current Subscription Period (as stated on the applicable Order Form). Upon any termination for cause by us, Customer will pay any unpaid Fees covering the remainder of the then-current Subscription Period after the effective date of termination. In no event will any termination relieve Customer of the obligation to pay any Fees payable to us for the period prior to the effective date of termination. Except as otherwise set forth herein, upon any termination of this Agreement, all licenses granted hereunder shall immediately terminate and Customer will no longer have the right to access or use the Services. Following termination or expiration of Customer's subscription, we will provide you with access to the Service for the sole purpose of exporting your Customer Information (except for comments made through the Services by Authorized Users) for a period of ninety (90) days. After such ninety (90) day period we have no obligation to maintain or provide any Customer Information and will thereafter, unless legally prohibited, delete all Customer Information in our systems or otherwise in our possession or under our control.

4.4. **Survival.** Sections 2, 3, 4, 5, 6.2, 7, 8, 9, and 12 will survive any termination or expiration of this Agreement.

5. **Intellectual Property.**

5.1. **Ownership of Elastic Projects Materials.** Elastic Projects owns the Services and its technical documentation related to the Services (collectively the "**Elastic Projects Materials**"). Elastic Projects retains all right, title and interest (including, without limitation, all patent, copyright, trademarks, trade secret and other intellectual property rights) in and to the Elastic Projects Materials, all related and underlying technology and any updates, enhancements, upgrades, modifications, patches, workarounds, and fixes thereto and all derivative works of or modifications to any of the foregoing. There are no implied licenses under this Agreement and any rights not expressly set forth in this Agreement are hereby expressly reserved by Elastic Projects.

5.2. **Customer's License to Us.**

(a) **Ownership of Customer Information.** As between Elastic Projects and Customer, Customer will own all Customer Information.

(b) **License to Personal Data.** Customer (for itself and all of its Authorized Users) grants us a worldwide, non-exclusive, limited term license to access, use, process, copy, distribute, perform, export and display Personal Data, only as reasonably necessary (a) to provide and maintain the Services (including the transfer of Personal Data to us); (b) to prevent or address service, security, support or technical issues; (c) as required by law; and (d) as expressly permitted in writing by Customer.

(c) *License to User Content.* By submitting, posting, storing, or otherwise making User Content available through the Services, Customer grants us, and represents and warrants that it has all rights necessary to grant (including without limitation any necessary consents and authorizations from individual persons identified in the User Content and licenses from third-parties whose content is included in the User Content), a royalty-free, sublicensable (as necessary to Subprocessors as described in Section 10.4 below), non-transferable (except permitted under Section 12.9), non-exclusive, worldwide license to use, host, store, reproduce, modify (e.g. to make sure your User Content displays properly through our Service), publish, list information regarding, translate, distribute (to the Authorized Users), perform (for Authorized Users), display (to Authorized Users), and make derivative works of the User Content in any form, media, or technology, whether now known or hereafter developed, solely for use in connection with our provision of the Services.

5.3. *Usage Data.* As we operate the Services, we collect data pertaining to Authorized Users' interaction with the Services, including information about the performance of the Services and measures of the operation of the Services ("*Usage Data*"). Notwithstanding anything else to the contrary herein: provided that the Usage Data is aggregated and anonymized, and no personal identifying information of the Customer is revealed to any third party, the parties agree that Elastic Projects is free to use the Usage Data in any manner. Elastic Projects owns all right, title, and interest in and to such Usage Data. For clarity, this section does not give Elastic Projects the right to identify Customer as the source of any Usage Data. Notwithstanding anything to the contrary in this Agreement, we shall not be prohibited or enjoined at any time by Customer from utilizing any "skills or knowledge of a general nature" acquired during the course of performing the Services specified under this Agreement. For purposes of this Agreement, "skills or knowledge of a general nature" includes, without limitation, anything that might reasonably be learned or acquired in connection with similar work performed for another client.

5.4. *Feedback.* You may from time to time provide suggestions, comments or other feedback with respect to the Services ("*Feedback*"). Elastic Projects may want to incorporate this Feedback into its Services and this clause provides us with the necessary license to do so. You hereby grant to us and our assigns a royalty-free, worldwide, perpetual, irrevocable, fully transferable and sublicenseable right and license to use, disclose, reproduce, modify, create derivative works from, distribute, display and otherwise distribute and exploit any Feedback as we see fit, entirely without obligation or restriction of any kind, except that Elastic Projects will not identify you as the provider of such Feedback.

6. **Warranties and Disclaimers.**

6.1. *Warranties.* Elastic Projects represents and warrants that it will provide the Services and Support Services in a professional and workmanlike manner. Each party represents and warrants that it has validly entered into this Agreement and has the legal power to do so. Customer represents and warrants that (i) it has obtained all rights and consents as may be required (by law or otherwise) to transfer, post, submit, and use any Customer Information as contemplated by this Agreement (including that it has the necessary consents and agreements to ensure that Customer Information submitted to, posted on, or otherwise created through the Services by any Authorized User is the property of Customer, regardless of whether the Authorized User from which it originated is an employee of Customer or otherwise); and (ii) the Customer Information and our use of it as contemplated by this Agreement and the Services will not knowingly violate any law or infringe any third-party's rights, including but not limited to any intellectual property or privacy rights.

6.2. *Disclaimer.* EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, THE SERVICES AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN TYPES OF WARRANTIES, SO THE ABOVE DISCLAIMERS MAY NOT APPLY TO YOU. THIS AGREEMENT GRANTS SPECIFIC LEGAL RIGHTS, AND CUSTOMER AND AUTHORIZED USERS MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. THE FOREGOING DISCLAIMERS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

7. *Limitation of Liability.* NEITHER PARTY WILL BE LIABLE WITH RESPECT TO ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, HOWEVER ARISING, FOR (A) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (B) DAMAGES BASED ON LOST REVENUES OR PROFITS, LOSS OF BUSINESS OR GOODWILL SHALL, LOSS OR CORRUPTION OF DATA OR BREACHES IN SYSTEM SECURITY OR (C),

ANY DAMAGES THAT, IN THE AGGREGATE, EXCEED THE AMOUNTS PAID OR PAYABLE TO ELASTIC PROJECTS WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO THE LIABILITY. THESE LIMITATIONS SHALL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO EITHER PARTY'S OBLIGATIONS UNDER SECTION 8 (INDEMNIFICATION), A PARTY'S GROSSLY NEGLIGENT OR WILLFUL BREACH OF SECTION 9 (CONFIDENTIALITY AND DATA SECURITY) OR CUSTOMER'S BREACH OF SECTION 2.4.

8. **Indemnification.**

8.1. **Elastic Projects' Indemnification.** Elastic Projects will defend Customer and its Authorized Users, officers, directors, and employees against any third party claim or action brought against Customer to the extent based on the allegation that the Services infringes such third party's intellectual property rights (patents, utility models, design rights, copyrights and trademarks or any other intellectual property right), and we agree to pay any settlements that Elastic Projects agrees to in a writing signed by Elastic Projects' authorized officer or final judgments awarded to the third party claimant by a court of competent jurisdiction. The foregoing obligations do not apply with respect to the Services or portions or components of either that are (a) not provided by Elastic Projects, (b) combined with other products, processes or materials that are not reasonably contemplated by us or our technical documentation regarding the Services, or (c) where Customer's use of the Services is not in accordance with this Agreement or our technical documentation regarding the Services.

8.2. **Customer's Indemnification.** Customer agrees to defend any third party claim or action brought against Elastic Projects and its officers, directors, and employees arising out of (a) the allegation that the Customer Information infringes such third party's intellectual property rights, (b) the allegation that the Customer Information content violates any applicable law, (c) Customer's or any Authorized User's gross negligence, fraud, or willful misconduct; or (d) any access by a third party to the Services using Customer's or any Authorized User's unique username, password or other approved security code ("User Credentials") where such access results from the failure of Customer or the Authorized User to maintain the User Credentials in confidence, and Customer agrees to pay any settlements that Customer agrees to in a writing signed by Customer's authorized officer or final judgments awarded to the third party claimant by a court of competent jurisdiction.

8.3. **Procedures.** Each party's obligations under Sections 8.1 and 8.2 are conditioned on the party seeking to have a claim defended and settled ("**Indemnified Party**") by the other party ("**Indemnifying Party**") is conditioned on the Indemnified Party (a) providing the Indemnifying Party with prompt written notice of any claim, (b) granting the Indemnifying Party the sole control of the defense and settlement of the claim, and (c) providing reasonable information and assistance to the Indemnifying Party in the defense or settlement of the claim at the Indemnifying Party's expense. Notwithstanding anything else to the contrary in this Agreement, a party's obligation to defend, indemnify and hold the other party harmless hereunder is limited to the Indemnifying Party's payment for the cost of defense of the third party claim incurred by the Indemnifying Party and the payment of (i) any settlements agreed to by the Indemnifying Party in a writing signed by an officer of the Indemnifying Party, or (ii) final judgments awarded to the third party claimant by a court of competent jurisdiction.

8.4. **Options.** If Customer's use of the Services has become, or in Elastic Projects' opinion is likely to become, the subject of any claim of infringement, Elastic Projects may at its option and expense, (a) procure for Customer the right to continue using and receiving the Services as set forth hereunder, (b) modify the Services to make it non-infringing, (c) substitute an equivalent for the Services or (d) if Elastic Projects, in its sole discretion, determines that options (a)-(c) are not commercially practicable, terminate this Agreement and refund Customer any pre-paid, unused Fees for the remainder of the then-current Subscription Period.

8.5. **Sole Remedy.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, THIS SECTION 8 STATES ELASTIC PROJECTS' ENTIRE RESPONSIBILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS UNDER THIS AGREEMENT.

9. **Confidentiality and Data Security.**

9.1. **Definition.** Each party ("**Disclosing Party**") may disclose "**Confidential Information**" to the other party ("**Receiving Party**") in connection with this Agreement, which is anything that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure including all Order Forms, as well as non-public business, product, technology and marketing information. Confidential Information of Customer includes Customer Information. If something is labeled "Confidential," that's a clear indicator to the Receiving Party that the material is confidential. Notwithstanding the above, Confidential Information does not include information that (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without

breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without use or reference to the Disclosing Party's Confidential Information.

9.2. **Protection and Use of Confidential Information.** The Receiving Party will (a) protect the Disclosing Party's Confidential Information using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care, (b) limit access to the Confidential Information to those employees, affiliates, Subprocessors (as described in Section 10.4 below), agents, consultants, legal advisors, financial advisors, and contractors ("**Representatives**") who need to know such information in connection with this Agreement and who are bound by confidentiality and non-use obligations just as protective of the Disclosing Party's Confidential Information as the terms of this Agreement; (c) except as expressly set forth herein, will not disclose any of Disclosing Party's Confidential Information to any third parties without the Disclosing Party's prior written consent; and (d) will not use the Disclosing Party's Confidential Information for any purpose other than to fulfill its obligations under this Agreement. Nothing above will prevent either party from sharing Confidential Information with financial and legal advisors; provided, however, that the advisors are bound to confidentiality obligations at least as restrictive as those in this Agreement.

9.3. **Compelled Access or Disclosure.** The Receiving Party may access or disclose Confidential Information of the Disclosing Party if it is required by law; provided, however, that the Receiving Party gives the Disclosing Party prior notice of the compelled access or disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the access or disclosure. If the Receiving Party is compelled by law to access or disclose the Disclosing Party's Confidential Information, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing access to such Confidential Information as well as the reasonable cost for any support provided in connection with the Disclosing Party seeking a protective order or confidential treatment for the Confidential Information to be produced.

10. **Privacy Policy and Protection of Personal Data.**

10.1. **Our Privacy Policy.** Elastic Projects collects and uses information relating to users of our Services and performance of our websites and produces, including Personal Data, in accordance with its privacy policy, the current version of which is located at <https://www.goabstract.com/privacy-policy/> ("**Privacy Policy**"). We're constantly trying to improve our Services, so we may need to change the Privacy Policy from time to time as well. If we make material changes to our Privacy Policy we will alert you by placing a notice on the Services, by sending you an email, or by some other means as is appropriate given the significance of the changes we make.

10.2. **Applicability of Our Data Processing Addendum.** We will process Personal Data only under the instruction and on your behalf; we will not process your Personal Data for other purposes. You acknowledge and agree that processing based on the provisions in this Agreement and in our technical product documentation qualify as your instructions. Personal Data includes "personal data" as that term is defined under the European General Data Protection Regulation (GDPR), and/or "personal information", "personally identifiable information", or such other similar term under applicable data privacy laws that applies to the person from which such data emanates. We will process any such Personal Data that you submit to us when you use the Services in accordance with the Data Processing Addendum set out in Exhibit A. Notwithstanding anything to the contrary herein, Elastic Projects may revise its Data Processing Addendum, including, as necessary to address changes in law, and will notify you of the revisions prior to implementing the revised Data Processing Addendum. If you believe that such revisions materially decrease our security and privacy obligations contained therein, you may terminate this Agreement.

10.3. **Our Transfer of Personal Data.** We may transfer, store, and otherwise process Customer Information (including Personal Data) in databases and with Subprocessors located in the United States. If you choose to use the Services or allow Authorized Users to use the Services from within any region that has laws governing data collection and use that differ from United States law (including the European Economic Area), you agree that you have obtained the rights and consents necessary for us to transfer, store, and otherwise process such Customer Information to and in the United States or other locations that may not have the same data protection framework as the country from which you or your Authorized Users may be using the Services. When we transfer Personal Data to the United States or our other data facilities, we will protect it as described in this Agreement and, if applicable, the Data Processing Addendum.

10.4. **Subprocessors.** The parties understand and agree that Elastic Projects uses certain third-party service providers to support the delivery of the Services that may store and process Personal Data about Authorized Users (e.g. Amazon Web Services) (each a "**Subprocessor**"). We currently use the following Subprocessors to support our delivery of the Services: <https://support.goabstract.com/hc/en-us/articles/360004111012-Abstract-Sub-processors>. Prior to engaging any Subprocessor, we perform diligence to evaluate their privacy, security and confidentiality practices, and we execute an agreement implementing applicable obligations to ensure, if applicable, that such

Subprocessor is storing and processing Personal Data in conformance with our privacy and security obligations under this Agreement. As our business grows and evolves, the Subprocessors we engage may also change. We will notify you in writing of any additional or replacement Subprocessors, along with posting such updates to the URL above (or a successor site), before we appoint such Subprocessor. If you object to a Subprocessor, you have the right to object to such Subprocessor in writing within thirty (30) days of the date of our notice to you and, if we are unable to overcome such objection, terminate this Agreement upon notice to us. If the Customer's objection remains unresolved sixty (60) days after it was raised, and we have not received any notice of termination, Customer is deemed to have accepted the Subprocessor.

10.5. **Safeguards.** The protection of Personal Data is important to us. Accordingly, we will maintain reasonable administrative, physical, and technical safeguards designed to protect Personal Data. Those safeguards will include measures for preventing unauthorized access, use, modification, deletion and disclosure of Personal Data by our personnel. In the event we have a reasonable, good faith belief that an unauthorized party has accessed Personal Data, we will promptly notify Customer and will use reasonable efforts to cooperate with Customer's investigation of the incident. Customer (not us) bears sole responsibility for adequate security, protection and backup of Personal Data when in Customer's or its representatives' or agents' possession or control. We are not responsible, and Customer is fully responsible, for what Customer's Authorized Users do with Personal Data. We are custodians of Personal Data.

11. **Additional Terms for Mobile Applications.** The following applies to any Services acquired from the Apple App Store ("**Apple-Sourced Software**"): Customer acknowledges and agree that this Agreement is solely between Customer and us, not Apple, Inc. ("**Apple**") and that Apple has no responsibility for the Apple-Sourced Software or content thereof. Customer's use of the Apple-Sourced Software must comply with the App Store Terms of Service. Customer acknowledges that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple-Sourced Software. In the event of any failure of the Apple-Sourced Software to conform to any applicable warranty, Customer may notify Apple, and Apple will refund the purchase price for the Apple-Sourced Software (if any); to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this Agreement and any law applicable to us as provider of the software. Customer acknowledges that Apple is not responsible for addressing any claims by Customer or any third party relating to the Apple-Sourced Software or Customer's possession and/or use of the Apple-Sourced Software, including, but not limited to: (a) product liability claims; (b) any claim that the Apple-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to us as provider of the software. Customer acknowledges that, in the event of any third-party claim that the Apple-Sourced Software or your possession and use of that Apple-Sourced Software infringes that third party's intellectual property rights, we, and not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement. Customer and we acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of this Agreement as relates to your license of the Apple-Sourced Software, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as relates to Customer's license of the Apple-Sourced Software against Customer as a third-party beneficiary thereof.

12. **General Terms.**

12.1. **Publicity.** Elastic Project shall not, without prior approval from Customer, use Customer's company name and logo as either a reference for marketing or promotional purposes, on our website, or in any other public or private communications with existing or potential customers. .

12.2. **Third Party Products, Links, and Information.** The Services may integrate with third party products, services, materials, or information, or links thereto that are not owned or controlled by us ("**Third Party Materials**") (e.g. Slack). You may be required by the providers of such Third Party Materials to enter into separate agreements in order to use their services. We do not endorse or assume any responsibility for any such Third Party Materials. If Customer or any Authorized User accesses any third party website or service, it does so at its own risk, and Customer acknowledges and agrees that this Agreement (including our Privacy Policy) does not apply to Customer or any Authorized User's use of such Third Party Materials. Customer expressly relieves us from any and all liability arising from its or its Authorized User's use of any Third Party Materials.

12.3. **Force Majeure.** Neither us nor Customer will be liable by reason of any failure or delay in the performance of its obligations on account of events beyond the reasonable control of a party, which may include denial-of-service attacks, a failure by a third-party hosting provider or utility provider, strikes, shortages, riots, fires, acts of God, war, terrorism, and governmental action.

12.4. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

12.5. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement; a person who is not a party to this Agreement may not enforce any of its terms under any applicable law.

12.6. Email Communications. Except as otherwise set forth herein, all legal notices under this Agreement will be provided by email to Customer at legal@appdynamics.com, although we may choose to provide general notices to Customer through the Services. Notices to us must be sent to support@goabstract.com, except for legal notices, such as notices of termination, which must be sent to legal@goabstract.com. Notices will be deemed to have been duly given (a) the business day after it is sent, in the case of notices through email; and (b) the same day, in the case of notices through the Services.

12.7. Amendment and Waivers. No modification or amendment to this Agreement will be effective unless made in writing and signed by an authorized representative of both parties. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. No waiver under this Agreement will be effective unless made in writing and signed by an authorized representative of the party being deemed to have granted the waiver.

12.8. Severability. This Agreement will be enforced to the fullest extent permitted under applicable law. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

12.9. Assignment. Neither party will assign or delegate any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign this Agreement in its entirety (including all Order Forms), without consent of Customer, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets. Any purported assignment in violation of this section is void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.10. Governing Law and Venue. This Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law of this Agreement, any arbitration conducted hereunder shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). The state and federal courts located in San Francisco County, California will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement or its formation, interpretation or enforcement, including any appeal of an arbitration award or for trial court proceedings if the arbitration provision below is found to be unenforceable. Each party hereby consents and submits to the exclusive jurisdiction of such courts. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover its reasonable costs and attorney's fees.

12.11. Entire Agreement. This Agreement, including all referenced pages and Order Forms, if applicable, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Without limiting the foregoing, this Agreement supersedes the terms of any online agreement electronically accepted by Customer or any Authorized Users. However, to the extent of any conflict or inconsistency between the provisions in this Agreement and any other documents or pages referenced in this Agreement, the following order of precedence will apply: (1) the terms of any Order Form (if any), (2) this Agreement and (3) any other documents or pages referenced in this Agreement. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order, vendor onboarding process or web portal, or any other Customer order documentation (excluding Order Forms) will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void.

ELASTIC PROJECTS, INC.	AppDynamics LLC
DocuSigned by:	DocuSigned by:
Signature: <u>Cassie McGruder</u>	Signature: <u>George Karamanos</u>
Print Name: <u>Cassie McGruder</u>	Print Name: <u>George Karamanos</u>
Print Title: <u>VP Finance</u>	Print Title: <u>General Counsel</u>
Date: <u>January 13, 2020</u>	Date: <u>January 13, 2020</u>

Exhibit A

Data Processing Addendum

Elastic Projects, Inc. (“*Elastic Projects*”, “*we*”, “*our*”, or “*us*”) and AppDynamics LLC (“*Customer*”, “*you*”, or “*your*”) enter into this Data Processing Addendum by executing one or more agreements related to Elastic Projects’ provision of its Services to Customer (the “*Services Agreement(s)*”). “*Services*” will be as defined in such Services Agreement.

If we Process any personal data (each as defined below) provided by you that originates from individuals located in the EEA, this DPA will apply to the Processing of such Customer Personal Data (as defined below). If there is a conflict between any of the terms of this DPA and the terms of the applicable Services Agreement, the provisions of this DPA will govern.

1. DEFINITIONS

1.1. Unless otherwise set out below, each capitalised term in this DPA shall have the meaning set out in the Agreement, and the following capitalised terms used in this DPA shall be defined as follows:

- (a) “*Data Exporter*” or “*Controller*” means the controller who transfers the personal data.
- (b) “*Customer Personal Data*” means the “*personal data*” (as defined in the GDPR) described in APPENDIX 1 and any other personal data that we process on behalf of the Customer in connection with our provision of the Services.
- (c) “*Data Protection Laws*” means the Directive, any applicable national implementing legislation including, and in each case as amended, replaced or superseded from time to time, including without limitation by the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council (“*GDPR*”) and all applicable legislation protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the Processing of Customer Personal Data.
- (d) “*Data Subject*” has the meaning given in the GDPR.
- (e) “*Directive*” means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- (f) “*European Economic Area*” or “*EEA*” means the Member States of the European Union together with Iceland, Norway, and Liechtenstein.
- (g) “*Processing*” has the meaning given in the Directive, and “*Process*” will be interpreted accordingly.
- (h) “*Data Importer*” or “*Processor*” means the processor who agrees to receive from the Data Exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country’s system ensuring adequate protection within the meaning of Article 25 (1) of Directive 95/46/EC.
- (i) “*Security Incident*” means any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, any Customer Personal Data.
- (j) “*Standard Contractual Clauses*” means the Standard Contractual Clauses (processors) approved by European Commission Decision C (2010)593 set out below or any subsequent version thereof released by the European Commission (which will automatically apply), and which includes APPENDIX 1 (Details of the

Transfer), and APPENDIX 2 (Technical and Organizational Measures), both as attached below.

(k) “**Subprocessor**” means certain third-party service providers that Elastic Projects retains to support the delivery of the Services that may store and process Customer Personal Data.

(l) “**Supervisory Authority**” has the meaning given in the GDPR.

2. DATA PROCESSING

2.1. **Location of Data Processing.** You understand and agree that we may transfer, store, and otherwise process Customer Personal Data in databases and with Subprocessors located in the United States.

2.2. **Instructions for Data Processing.** We will only Process Customer Personal Data in accordance with your written instructions (which include Processing in accordance with the Services Agreement), unless Processing is required by European Union or Member State law to which we may be subject. The Services Agreement and this DPA is your complete and final instructions to us in relation to the processing of Customer Personal Data. Processing outside the scope of this DPA or the Services Agreement will require prior written agreement between both parties regarding additional instructions for Processing.

2.3. **Required Consents.** Customer will ensure that it has obtained/will obtain all necessary consents for the Processing of Customer Personal Data as necessary for Elastic to provide the Services as contemplated in the Services Agreement.

2.4. **International Transfers of Personal Data.** To the extent that the Processing of Customer Personal Data by us involves the export of such Personal Data to a country or territory outside the EEA, other than a country or territory ensuring an adequate level of protection for the rights and freedoms of Data Subjects in relation to the Processing of Personal Data as determined by the European Commission (an “**International Transfer**”), such transfer will be governed by the Standard Contractual Clauses attached below. In the event of any conflict between any terms in the Standard Contractual Clauses, this DPA, and the Agreement, the Standard Contractual Clauses will govern.

3. SUBPROCESSORS

3.1. **Authorized Subprocessors.** The parties understand and agree that Elastic Projects uses certain Subprocessors. We currently use the following Subprocessors to support our delivery of the Services: <https://support.goabstract.com/hc/en-us/articles/360004111012-Abstract-Sub-processors>. Your agreement to this DPA constitutes consent (in accordance with Clause 5(h) of the Standard Contract Clauses) to our Subcontractors Processing Customer Personal Data. Prior to engaging any Subprocessor, we perform diligence to evaluate their privacy, security and confidentiality practices, and we execute an agreement implementing applicable obligations to ensure, if applicable, that such Subprocessor is storing and processing Personal Data in conformance with our privacy and security obligations under this Agreement. As our business grows and evolves, the Subprocessors we engage may also change. We will notify you in writing of any additional or replacement Subprocessors, along with posting such updates to the URL above (or a successor site), before we appoint such Subprocessor. If you object to a Subprocessor, you have the right to object to such Subprocessor in writing within thirty (30) days of the date of our notice to you and any other rights regarding our amendment of our Subprocessor list as stated under your applicable Services Agreement. If the Customer’s objection remains unresolved sixty (60) days after it was raised, and we have not received any notice of termination, Customer is deemed to have accepted the Subprocessor.

3.2. **Subprocessors’ Processing of Customer Personal Information.** Except as stated in Section 3.1 above, we will not permit, allow or otherwise facilitate Subprocessors to Process Customer Personal Data without the prior written consent of Customer and unless we enter into a written agreement with the Subprocessor which imposes the same obligations on the Subprocessor with regard to their Processing of Customer Personal Data, as are imposed on us under this DPA.

3.3. **Liability of Subprocessors.** We will at all times remain responsible for compliance with our obligations under the DPA and will be liable to the Customer for the acts and omissions of any Subprocessor approved by the Customer as if they were our acts and omissions.

3.4. **Subprocessor Agreements.** Regardless of any other terms the parties may agree to, as long as we comply with the terms of Sections 3.1 – 3.3 above, you agree that we will not be required to provide you with our

agreements with our Subprocessors and there will be no requirement that you be a third-party beneficiary of such agreements.

4. **DATA SECURITY, AUDITS AND SECURITY NOTIFICATIONS**

4.1. **Elastic Security Obligations.** Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, we will implement appropriate technical and organizational measures to ensure a level of security appropriate to such risk, including the measures set out in APPENDIX 2. Upon request by the Customer, we will make available information reasonably necessary to demonstrate compliance with this DPA.

4.2. **Security Incident Notification.** If we or any Subprocessor become aware of a Security Incident we will (a) notify the Customer of the Security Incident within seventy-two (72) hours, (b) investigate the Security Incident and provide such reasonable assistance to any law enforcement or regulatory official as required to investigate the Security Incident, and (c) take steps to remedy any non-compliance with this DPA.

5. **ACCESS REQUESTS AND DATA SUBJECT RIGHTS**

5.1. **Data Subject Requests.** Except as required (or where prohibited) under applicable law, we will notify the Customer of any request received by us or any Subprocessor from a Data Subject regarding their personal data included in the Customer Personal Data, and will not respond to the Data Subject. We will provide the Customer with the ability to correct, delete, block, access or copy the Customer Personal Data as permitted by the functionality of the Services.

5.2. **Government Disclosure.** We will notify the Customer of any request for the disclosure of Customer Personal Data by a governmental or regulatory body or law enforcement authority (including any data protection supervisory authority) unless otherwise prohibited by law or a legally binding order of such body or agency.

5.3. **Data Subject Rights.** Where applicable, and taking into account the nature of the Processing, we will use all reasonable endeavors to assist the Customer by implementing any other appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising Data Subject rights laid down in the GDPR.

6. **DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION**

To the extent required under applicable Data Protection Laws, we will provide reasonable assistance to the Customer with any data protection impact assessments and with any consultations to any Supervisory Authority of the Customer, in each case solely in relation to Processing of Customer Personal Data and taking into account the nature of the Processing and information available to us.

7. **TERMINATION**

7.1. **Deletion of data.** Subject to section 7.3 below, we will, within 90 (ninety) days of the date of termination of the Agreement:

- (a) Return, at Customer's request, or delete (including all copies of) all Customer Personal Data Processed by us; and
- (b) use all reasonable efforts to ensure that our Subprocessors delete all Customer Personal Data Processed by such Subprocessors.

7.2. **Retention of Personal Data.** Elastic Projects and its Subprocessors may retain Customer Personal Data to the extent required by applicable laws and only to the extent and for such period as required by applicable laws and always provided that we continue to keep such Customer Personal Data confidential in accordance with the Services Agreement.

7.3. **Exceptions.** You understand and agree that we are unable to return or delete information, which may include personal data, in comments, annotations or other derivative works created by the Customer and contained within Sketch files ("**Comments**"). Customer acknowledges the foregoing and agrees not to include any personal data within such Comments. If we breach our obligations under this DPA (including the Standard Contract Clauses)

you may terminate the Services Agreement, but only in accordance with the termination for breach provisions contained therein.

STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

For the purposes of this APPENDIX 1, references to the "data exporter" and "data importer" shall be to the Customer and to Elastic respectively (each a "*party*"; together "*the parties*").

Clause 1

For the purposes of the Clauses:

Definitions

- (a) '*personal data*', '*special categories of data*', '*process/processing*', '*controller*', '*processor*', '*data subject*' and '*supervisory authority*' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) '*the data exporter*' means the controller who transfers the personal data;
- (c) '*the data importer*' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) '*the subprocessor*' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) '*the applicable data protection law*' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) '*technical and organisational security measures*' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses

or the contract contain commercial information, in which case it may remove such commercial information;

- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred

to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
- (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of

a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1

APPENDIX 1 DETAILS OF THE TRANSFER

Data exporter

The data exporter is the Customer

Data importer

The data importer is Elastic

Data subjects

The personal data transferred concern the following categories of data subjects: the Customer's Authorized Users, and any other persons authorised by the Customer to access and use the Services, including employees and independent contractors.

Categories of data

The personal data transferred concern the following categories of data: names, email addresses, geographic locations, and any other personal data provided by the Customer in connection with its use of the Services.

Processing Operations

The personal data transferred will be subject to the following basic processing activities: transmitting, collecting, storing and analysing data in order to provide the Services to the Customer, and any other activities related to the provision of the Services or specified in the Agreement.

APPENDIX 2

Security Controls

The Services include customer-configurable security controls that allow Customer to tailor the security of the Services for its own use. These controls include:

- Unique User identifiers (User IDs) to ensure that activities can be attributed to the responsible individual.

Software Security

The Services include effective controls to prevent the classes of software vulnerabilities relevant to the Services, the design of the services, and the software languages used in the delivery of the services. For general web applications, these vulnerability classes include, but are not limited to:

- SQL injection
- Cross site scripting
- Cross site request forgery
- Session fixation
- Sensitive cookies permitted to be sent over insecure channels
- Buffer overflows
- Command injection
- Directory traversal
- Insecure third-party domain access and cross domain policies
- HTTP response splitting
- Unauthorized privilege escalation
- Use of HTTPS using other than SSLv3 or TLS
- Use of SSL/TLS with null ciphers or ciphers using symmetric keys of less than 128 bits in length
- Returning verbose error information to clients
- Exposing cryptography errors to client (e.g. incorrect padding)
- Arbitrary redirection

Security Procedures, Policies and Logging

The Services are operated in accordance with the following procedures to enhance security:

- User credentials or credential equivalents stored on Elastic Projects' third party hosting services provider's servers or in persistent cookies are not stored in a format from which the original password can be derived (e.g. plaintext, encryptions other than one-way hashes) or easily discovered by brute force attacks given knowledge of the stored representation.
- User access log entries will be maintained, containing date, time, User ID, URL executed or entity ID operated on, operation performed (viewed, edited, etc.) and source IP address. Customer acknowledges that source IP address might not be available if NAT (Network Address Translation) or PAT (Port Address Translation) is used by Customer or its ISP.
- Logging will be kept for a minimum of 90 days.
- Logging will be kept in a secure area to prevent tampering.
- Passwords are not logged under any circumstances.

Intrusion Detection

Elastic Projects, or an authorized third party, will monitor the Services for unauthorized intrusions using network-based intrusion detection mechanisms.

User Authentication

Access to the Services requires a valid User ID and password combination, which are encrypted via SSL while in transmission. A random session ID cookie greater than or equal to 128 bits in length is used to uniquely identify each User.

Security Logs

Elastic Projects shall ensure that all Elastic Projects systems, including firewalls, routers, network switches and operating systems, log information to their respective system log facility or a centralized syslog server (for network systems) in order to enable the security audits referred to herein.

Incident Management

Elastic Projects maintains security incident management policies and procedures, including detailed security incident escalation procedures. Elastic Projects will promptly notify Customer in the event Elastic Projects becomes aware of an actual or reasonably suspected unauthorized disclosure of Customer Data.

Right to Audit Reports of Security Procedures

Elastic Projects agrees that at least once per year and after any security incident in which Customer Data is accessed by or disclosed to a third party: (a) undergo an industry accepted third party audit or assessment and, upon request from Customer, will furnish evidence of successful completion of the audit or assessment; and (b) make commercially reasonable efforts to remediate any critical and high severity issues identified during any third party audit, assessments, and/or penetration tests in a timely manner.

SOC 2 Report

Subject to reasonable confidentiality obligations consistent with generally accepted industry practices regarding such report, once per year during the term of the Agreement Elastic Projects will, upon request, provide Customer with a SOC 2 Report from Elastic Projects' third-party hosting services provider. The provision of such SOC 2 Report will be considered to fulfill the requirements of Clauses 5(f) and 12(2) of the Standard Contract Clauses.

Physical Security

Elastic Projects' third-party hosting services provider maintains data centers that have an access system that controls access to the data center. Such controls are designed to ensure that this system permits only authorized personnel to have access to secure areas. Elastic Projects' third party hosting services provider's facility is also designed to withstand adverse weather and other reasonably predictable natural conditions, and is secured by guards and access screening.

Reliability and Backup

All networking components, SSL accelerators, load balancers, Web servers and application servers are configured in a redundant configuration. All Customer Data is stored on a primary database server that is clustered with a backup database server for redundancy. All Customer Data is stored on carrier-class disk storage using RAID disks and multiple data paths. All Customer Data, up to the last committed transaction, is automatically backed up on a regular basis.

Disaster Recovery

Elastic Projects has a disaster recovery facility or facilities that are geographically remote, along with required hardware, software, and Internet connectivity, in the event Elastic Projects production facilities at the primary data center were to be rendered unavailable.

Viruses

Elastic Projects will make commercially reasonable efforts to ensure that the Services will not introduce any viruses to Customer's systems. Customer will make commercially reasonable efforts to ensure that content uploaded into the Services by Customer will not introduce any viruses into Elastic Projects' systems.

Data Encryption

Elastic Projects uses industry accepted encryption products to protect Customer Data and communications during transmissions between Customer's network and the Services, including minimum https TLS 256 bit. Elastic Projects will encrypt data at rest using industry standard algorithms.

System Changes and Enhancements

Elastic Projects plans to enhance and maintain the Services during the term of the Agreement. Security controls, procedures, policies and features may change or be added. Elastic Projects will provide security controls that deliver a level of security protection that is not materially lower than that provided as of the Effective Date.