

## Elastic – Customer Data Processing Addendum

This Data Processing Addendum (“**DPA**”) forms part of the agreement between Customer (as defined below) and Elastic (as defined below) for Elastic Offerings (as defined below) (collectively, the “**Agreement**”). For the purposes of this DPA, “**Elastic**” means the entity identified as “Elastic” on the Order Form or in the applicable Agreement (if no Order Form is applicable) and “**Customer**” means the entity or individual identified as “Customer” on the Order Form or the entity or individual identified in the applicable Agreement as registering to use Elastic’s Cloud Services, Support Services and/or Consulting Services (collectively, the “**Elastic Offerings**”) (if no Order Form is applicable).

This DPA describes the commitments of Elastic and the Customer (each a “**party**” and together, the “**parties**”) concerning the processing of Personal Data in connection with the provision of one or more Elastic Offerings contemplated by the applicable Agreement.

The terms used in this DPA have the meaning set forth in this DPA. Capitalized terms not otherwise defined herein have the meaning given to them in the Agreement.

The parties agree as follows:

1. **Definitions.** The following capitalized terms, when used in this DPA, will have the corresponding meanings provided below:
  - 1.1 “**Applicable Data Protection Laws**” means European Data Protection Laws and the California Consumer Privacy Act of 2018 (California Civil Code §§ 1798.100 et seq (“**CCPA**”); as may be amended, superseded or replaced.
  - 1.2 “**Customer Personal Data**” means any Personal Data processed by Elastic on behalf of Customer as a service provider or processor (as applicable) in connection with the Elastic Offerings, as more particularly described in Annex I of this DPA.
  - 1.3 “**Elastic Security Standards**” mean Elastic’s then-current security standards for the processing of Content as set forth at <https://www.elastic.co/pdf/elastic-information-security-addendum-consolidated-v030121.0.pdf>.
  - 1.4 “**EEA**” means the countries that are parties to the agreement on the European Economic Area and Switzerland.
  - 1.5 “**European Data Protection Laws**” means: (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (“**GDPR**”); (ii) Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector, as amended by Directive 2009/136/EC (“**e-Privacy Directive**”); (iii) any applicable national implementations of (i) and (ii); (iv) the Swiss Federal Data Protection Act of 19 June 1992 and its Ordinance (“**Swiss DPA**”); and (v) in respect of the United Kingdom (“**UK**”), the Data Protection Act 2018 and the GDPR as saved into UK law by virtue of section 3 of the UK’s European Union (Withdrawal) Act 2018 (the “**UK GDPR**”) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 as they continue to have effect by virtue of section 2 of the UK’s European Union (Withdrawal) Act 2018 ; in each case as may be amended, superseded or replaced.
  - 1.6 “**Personal Data**” means any information that relates to an identified or identifiable natural person and which is protected as “personal data”, “personal information” or “personally identifiable information” under Applicable Data Protection Laws.
  - 1.7 “**Restricted Transfers**” means: (i) where the GDPR applies, a transfer of Personal Data from the EEA to a country outside of the EEA which is not subject to an adequacy determination by the European Commission (an “**EEA Restricted Transfer**”); (ii) where the UK GDPR applies, a transfer of Personal Data from the United Kingdom to any other country which is not subject to adequacy regulations pursuant to Section 17A of the United Kingdom Data Protection Act 2018 (a “**UK Restricted Transfer**”); and (iii) where the Swiss DPA applies, a transfer of Personal Data to a country outside of Switzerland which is not included on the list of adequate jurisdictions published by the Swiss Federal Data Protection and Information Commissioner.
  - 1.8 “**Security Breach**” has the meaning set forth in the Elastic Security Standards.
  - 1.9 “**Standard Contractual Clauses**” or “**SCCs**” means the standard contractual clauses as adopted by the EU Commission by means of the Implementing Decision EU 2021/914 of June 4, 2021, as amended, superseded or replaced from time to time.
  - 1.10 “**Sub-processor**” means any processor engaged by Elastic or its Affiliates to assist in fulfilling its obligations with respect to providing the Elastic Offerings pursuant to the Agreement or this DPA. Sub-processors may include third parties or Elastic Affiliates.
  - 1.11 “**UK Addendum**” means the International Data Transfer Addendum to the EU Commission Standard Contractual Clauses issued by UK Information Commissioners Office under S.119(A) of the UK Data Protection Act 2018.
  - 1.12 The terms “**controller**”, “**processor**” and “**processing**” shall have the meanings given to them in the applicable European Data Protection Laws, and “**process**”, “**processes**” and “**processed**” shall be interpreted accordingly; and the terms “**business**”, “**service provider**” and “**sell**” shall have the meanings given to them in the CCPA.
2. **Role and Scope of Processing**
  - 2.1 **Role of the Parties.** Without prejudice to any data usage permitted under the Agreement, the parties acknowledge and agree that for the purpose of this DPA Customer is a business or the controller (as applicable) with respect to the processing of Customer Personal Data, and Customer has appointed Elastic to process Customer Personal Data as a processor or service provider (as applicable) on its behalf in connection with the Elastic Offerings (notwithstanding that Customer may be a service provider or a processor acting on behalf of its own customers and in such case Elastic shall process Customer Personal Data as a service provider or a sub-processor acting on behalf of Customer), as further described in Annex I of this DPA. This DPA applies only to the extent that Elastic processes as a processor or service provider (as applicable) any Customer Personal Data. Any processing by either party of Customer Personal Data under or in connection with the Elastic Offerings shall be performed in accordance with Applicable Data Protection Laws.
  - 2.2 **Elastic Processing of Personal Data.** Elastic shall process Customer Personal Data for the purposes described in and as otherwise permitted by the Agreement and in accordance with Customer’s documented lawful instructions. The parties agree that the Agreement and applicable Order Form (including this DPA) sets out the Customer’s complete and final instructions to Elastic in relation to the processing of Customer Personal Data. Without prejudice to Section 2.3 (Customer Responsibilities), Elastic shall notify Customer in writing, unless prohibited from doing so under Applicable Data Protection Laws, if it becomes aware or believes that any data processing instructions from Customer violates Applicable Data Protection Laws.
  - 2.3 **Customer Responsibilities.** Customer is responsible for the lawfulness of Customer Personal Data processing under or in connection with the Elastic Offerings. Customer shall (i) have provided, and will continue to provide all notices and have obtained, and will continue to obtain, all consents, permissions and rights necessary under Applicable Data Protection Laws for Elastic to lawfully process Customer Personal Data for the purposes contemplated by the Agreement (including this DPA); (ii) have complied with all Applicable Data Protection

Laws applicable to the collection, provision and contemplated processing of Customer Personal Data to and by Elastic and/or its Sub-processors; and (iii) ensure its processing instructions comply with applicable laws (including Applicable Data Protection Laws).

### **3. Subprocessing**

**3.1 Authorized Sub-processors.** Customer acknowledges and agrees that Elastic may engage Sub-processors to process Customer Personal Data on Customer's behalf. The Sub-processors currently engaged by Elastic and authorized by Customer are for external Sub-processors as set forth at [https://www.elastic.co/agreements/external\\_subprocessors](https://www.elastic.co/agreements/external_subprocessors) and for internal Sub-processors as set forth at [https://www.elastic.co/agreements/internal\\_subprocessors](https://www.elastic.co/agreements/internal_subprocessors). Elastic shall notify Customer if it changes its Sub-processors in advance of any such changes for the applicable Elastic Offering(s). Elastic's notification shall be through email communications to Customer and Customer must sign-up to receive the email notifications through RSS web feed links. To sign-up, use the weblinks set forth in this Section 3.1.

### **4. Security and Audits**

**4.1 Elastic Security Standards.** Elastic shall implement and maintain the appropriate technical and organizational security measures defined in the Elastic Security Standards to protect Customer Personal Data from Security Breach and to preserve the security and confidentiality of the Customer Personal Data. Such measures will include, at a minimum, those measures described in the Elastic Security Standards specific to the Elastic Offerings. Elastic shall ensure that any person who is authorized by Elastic to process Customer Personal Data shall be under an appropriate obligation of confidentiality (whether a contractual or statutory duty).

**4.2 Customer Security Responsibilities.** Notwithstanding the above, Customer agrees that except as provided by this DPA, Customer shall implement and maintain appropriate technical and organizational security measures designed to protect Personal Data from Security Breaches and to preserve the security and confidentiality of Customer Personal Data while in its dominion and control.

**4.3 Security Breach Response.** Upon becoming aware of a Security Breach, Elastic shall notify Customer in accordance with Section 3 of the Elastic Security Standards.

**4.4 Security Audits.** Elastic shall provide written responses (on a confidential basis) to all reasonable requests for information made by Customer related to its processing of Customer Personal Data (including responses to information security and audit questionnaires that are necessary to confirm Elastic's compliance with this DPA) provided that Customer shall not exercise this right more than once in any 12-month rolling period. Notwithstanding the foregoing, Customer may also exercise such audit right in the event Customer is expressly requested or required to provide this information to a data protection authority on another reasonably similar basis.

### **5. International Transfers**

**5.1 Processing locations.** Customer acknowledges and agrees that Elastic may transfer and process Customer Personal Data to and in the United States and anywhere else in the world where Elastic, its Affiliates or its Sub-processors maintain data processing operations. Elastic and Customer shall work together to ensure such transfers are made in compliance with the requirements of Applicable Data Protection Laws and this DPA.

### **6. Deletion of Customer Personal Data**

**6.1** Upon termination or expiry of the applicable Elastic Offering, or earlier in accordance with the applicable data retention policy for the Elastic Offering, Elastic shall delete all Customer Personal Data (including copies) in its possession or control in accordance with the Agreement, save that this requirement shall not apply to the extent Elastic is required by applicable law to retain some or all of the Customer Personal Data.

### **7. Rights of Individuals and Cooperation**

**7.1 Data Subject Requests.** To the extent that Customer is unable to independently access the relevant Customer Personal Data within the Elastic Offerings, Elastic shall, taking into account the nature of the processing, provide reasonable cooperation to assist Customer to respond to any requests from individuals or applicable data protection authorities relating to the processing of Customer Personal Data under the Agreement. In the event that any such request is made to Elastic directly, Elastic shall not respond to such communication directly without Customer's prior authorization, unless legally compelled to do so. If Elastic is required to respond to such a request, Elastic shall promptly notify Customer and provide it with a copy of the request unless legally prohibited from doing so.

**7.2 Subpoenas and Court Orders.** If a law enforcement agency sends Elastic a demand for Customer Personal Data (for example, through a subpoena or court order), Elastic shall give Customer reasonable notice of the demand to allow Customer to seek a protective order or other appropriate remedy unless Elastic is legally prohibited from doing so.

### **8. Jurisdiction Specific Terms**

**8.1 EEA and UK.** To the extent the Customer Personal Data is subject to European Data Protection Laws, the following terms shall apply in addition to the terms in the remainder of this DPA:

- (a) **Sub-processor Obligations.** Elastic shall: (i) enter into a written agreement with each Sub-processor imposing data protection terms that require the Sub-processor to protect personal data to the standard required by applicable European Data Protection Law and this DPA; and (ii) remain responsible for its compliance with the obligations of this DPA and for any acts or omissions of the Sub-processor that cause Elastic to breach any of its obligations under this DPA.
- (b) **Objections to Sub-processors.** Customer may object in writing to Elastic's appointment of a new Sub-processor by notifying Elastic promptly in writing within ten (10) calendar days of Elastic notice in accordance with Section 3.1 above. Such notice shall explain the reasonable grounds for the objection and the parties shall discuss such concerns in good faith with a view to achieving commercially reasonable resolution. If no such resolution can be reached, Elastic will, at its sole discretion, either not appoint Sub-processor, or permit Customer to suspend or terminate the affected Elastic Offerings in accordance with the termination provisions in the Agreement without liability to either party (but without prejudice to any fees incurred by Customer prior to suspension or termination).
- (c) **Data Protection Impact Assessment.** To the extent Elastic is required under applicable European Data Protection Law, Elastic shall provide reasonably requested information regarding Elastic's processing of Customer Personal Data under the Agreement to assist the Customer to carry out data protection impact assessments or prior consultations with supervisory authorities as required by law.

### **8.2 Restricted Transfers.**

- 8.2.1 **GDPR.** In connection with any transfer of Customer Personal Data to Elastic from Customer, which is a Restricted Transfer, Elastic agrees to abide by and process Customer Personal Data in compliance with the Standard Contractual Clauses, which shall be deemed incorporated into this DPA as follows:
- (a) Where Customer is a controller of the Customer Personal Data, Module Two (*controller to processor transfers*) shall apply and where Customer is a processor of the Customer Personal Data, Module 3 (*processor to processor transfers*) shall apply;
  - (b) In Clause 7, the optional docking clause will apply;
  - (c) In Clause 9, Option 2 will apply and the time period for prior notice of Sub-processor changes shall be as set out in Section 8.1(b) of this DPA;
  - (d) In Clause 11, the optional language will not apply;
  - (e) In Clause 17, Option 2 will apply, and the Standard Contractual Clauses will be governed by the law of the Netherlands;
  - (f) In Clause 18(b), disputes shall be resolved before the courts of the Netherlands; and
  - (g) Annex I and II of the Standard Contractual Clauses shall be deemed completed with the information set out in Annexes I and II to this DPA;
- 8.2.2 **UK GDPR.** In connection with any transfer of Customer Personal Data to Elastic from Customer which is a Restricted Transfer to which the UK GDPR applies, the Standard Contractual Clauses shall apply in accordance with Section 8.2.1 above, but as modified and interpreted by the Part 2: Mandatory Clauses of the UK Addendum, which shall be incorporated into and form an integral part of this DPA. Any conflict between the terms of the Standard Contractual Clauses and the UK Addendum shall be resolved in accordance with Section 10 and Section 11 of the UK Addendum. In addition, tables 1 to 3 in Part 1 of the UK Addendum shall be completed respectively with the information set out in Annex I and Annex II of this DPA and table 4 in Part 1 of the UK Addendum shall be deemed completed by selecting "neither party".
- 8.2.3 **Swiss DPA.** In connection with any transfer of Customer Personal Data to Elastic from Customer which is a Restricted Transfer to which the Swiss DPA applies, the Standard Contractual Clauses shall apply in accordance with Section 8.2.1 above, but with the following modifications:
- (a) any references in the Standard Contractual Clauses to "Regulation (EU) 2016/679" shall be interpreted as references to the Swiss DPA and the equivalent articles or sections therein;
  - (b) any references to "EU", "Union", "Member State" and "Member State law" shall be interpreted as references to Switzerland and Swiss law, as the case may be;
  - (c) any references to the "competent supervisory authority" and "competent courts" shall be interpreted as references to the relevant data protection authority and courts in Switzerland; and
  - (d) the Standard Contractual Clauses shall be governed by the laws of Switzerland and disputes shall be resolved before the competent Swiss courts.
- 8.2.4 **Standard Contractual Clauses Precedence.** It is not the intention of either party, nor the effect of this DPA, to contradict or restrict any of the provisions set forth in the Standard Contractual Clauses. Accordingly, if and to the extent the Standard Contractual Clauses, to the extent applicable, conflict with any provision of this DPA, the Standard Contractual Clauses shall prevail to the extent of such conflict.
- 8.2.5 **Alternative Transfer Mechanism.** Elastic and Customer agree that clauses 8.2.1 – 8.2.3 shall apply only to the extent that in the absence of their application either party would be in breach of European Data Protection Laws in connection with the transfer of Customer Personal Data from Customer to Elastic. To the extent Elastic adopts an alternative mechanism for the lawful transfer of Customer Personal Data not described in this DPA ("Alternative Transfer Mechanism"), the Alternative Transfer Mechanism shall, upon notice to Customer, apply to the extent such Alternative Transfer Mechanism complies with European Data Protection Laws and extends to the territories to which Customer Personal Data is transferred. In addition, if and to the extent that a court of competent jurisdiction or a supervisory authority with binding authority orders or determines (for whatever reason) that the measures described in this DPA cannot be relied on to lawfully transfer Customer Personal Data to Elastic, Customer acknowledges and agrees that Elastic may implement any additional measures or safeguards that may be reasonably required to enable the lawful transfer of such Customer Personal Data.
- 8.3 **California.** To the extent the Customer Personal Data is subject to the CCPA, the parties agrees that Customer is a business and that it appoints Elastic as its service provider to process Customer Personal Data as permitted under the Agreement (including this DPA) and the CCPA, or for purposes otherwise agreed in writing (the "**Permitted Purposes**"). Customer and Elastic agree that: (a) Elastic shall not retain, use or disclose personal information for any purpose other than the Permitted Purposes; (b) Customer Personal Data was not sold to Elastic and Elastic shall not "sell" personal information (as defined by the CCPA); (c) Elastic shall not retain, use or disclose personal information outside of the direct business relationship between Customer and Elastic; and (d) Elastic may de-identify or aggregate personal information in the course of providing the Elastic Offerings. Elastic certifies that it understands the restrictions set out in this Section 8.2 and will comply with them.
- 9. Miscellaneous**
- 9.1 Except for the changes made by this DPA as applicable to the Elastic Offerings, the Agreement remains unchanged and in full force and effect.
- 9.2 This DPA shall be governed by and construed in accordance with the governing law and jurisdiction provisions in the Agreement, unless required otherwise by European Data Protection Laws.

## ANNEX I

### Description of Parties and Processing

#### A. LIST OF PARTIES

##### Data exporter(s):

1. Name: Customer

Address: As stated in Customer's underlying Agreement or on Customer's Account

Contact person's name, position and contact details: The Contact information provided by Customer in its Account

Activities relevant to the data transferred under these Clauses: Customer administration, receipt and/or use of the Elastic Offering(s) on behalf of itself and its Affiliates. Customer and its Affiliates may elect to transfer personal data of data subjects (as described below) in connection with Customer's or its Affiliates' use of the Elastic Offerings, as set forth in the Agreement. References in this Annex I to Customer's use of the Elastic Offerings shall also include use of such Elastic Offering(s) by Customer Affiliates.

Role : Controller or Processor, as applicable

##### Data importer(s):

1. Name: Elastic

Address: As described in Customer's Underlying Agreement or Order Form

Contact person's name, position and contact details: To the Legal Department as described in the Notice section of the underlying agreement.

Activities relevant to the data transferred under these Clauses: Elastic provides the Elastic Offerings as set forth in the Agreement.

Signature and date: As per the Effective date and signature per the Underlying Agreement.

Role: Processor

The registration numbers for Elastic are set forth at <https://www.elastic.co/agreements/registration-numbers>.

#### B. DESCRIPTION OF TRANSFER

- Categories of data subjects whose personal data is transferred

Customer Personal Data transferred to Elastic may concern the following categories of data subjects: individuals whose personal data or personal information Customer elects to transfer to Elastic for processing for the provision, receipt and/or use of the applicable Elastic Offering(s) as set forth in the Agreement.

- Categories of personal data transferred

The Customer Personal Data transferred concern the following categories of data (please specify):

- Use of the Elastic Offering by Customer. Customer Personal Data that Customer elects to transfer to Elastic for processing for the provision of the applicable Elastic Offering.

- Diagnostics. Customer Personal Data that may be contained in data files that have been recorded at a particular time during a computing process and are then provided to Elastic's support engineers in connection with troubleshooting an error or performance issue.

- Sensitive data transferred

The parties do not intend for any special category data to be processed under the Agreement.

- Frequency of the transfer

For the duration of Customer's services purchased from Elastic.

- Nature of the processing

Customer Personal Data that Customer elects to transfer to Elastic to be processed for the provision, receipt and/or use of the applicable Elastic Offering as set forth in the Agreement.

- Purpose(s) of the data transfer and further processing

The operation, support, use or provisioning of the services as set out in the Agreement and compliance with applicable laws.

- The period for which the personal data will be retained

The duration of the processing under this DPA is until the termination or expiration of the applicable Elastic Offering(s) in accordance with its terms plus the period from the expiry of the applicable Elastic Offering(s) until deletion of personal data by Elastic in accordance with the terms of the Agreement.

#### C. COMPETENT SUPERVISORY AUTHORITY

The supervisory authority of the Netherlands shall act as competent supervisory authority.

**Annex II to Exhibit A**

TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA: as described in the Elastic Security Standards (defined in the DPA) as set forth at <https://www.elastic.co/pdf/elastic-information-security-addendum-consolidated-v030121.0.pdf>.

### **Annex III to the Standard Contractual Clauses**

This Annex III sets out the parties' interpretation of their respective obligations under specific Clauses, identified below, of the SCCs. Where a party complies with the interpretations set out in this Annex III, that party shall be deemed by the other party to have complied with its commitments under the SCCs.

For the purposes of this Annex III, "**DPA**" means the Data Processing Addendum in place between data importer and data exporter and to which the SCCs are incorporated and "**Agreement**" shall have the meaning given to it in this DPA. In the event of a contradiction between this Annex III and the SCCs in Exhibit A, the provisions of the SCCs in Exhibit A shall prevail.

#### **Clauses 8.3 and 13: Disclosure of these Clauses**

1. Data exporter agrees that these Clauses constitute data importer's Confidential Information as that term is defined in the Agreement and may not be disclosed by data exporter to any third party without data importer's prior written consent unless permitted pursuant to the Agreement. This shall not prevent disclosure of these Clauses to a data subject pursuant to Clause 8.3 or a supervisory authority pursuant to Clause 13.

#### **Clause 16: Suspension of data transfers and termination:**

1. The parties acknowledge that data importer may process the personal data only on behalf of the data exporter and in compliance with its instructions as provided by the data exporter and the Clauses.
2. The parties acknowledge that if data importer cannot provide such compliance for whatever reason, 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.
3. If the data exporter intends to suspend the transfer of personal data and/or terminate these Clauses, it shall endeavour to provide notice to the data importer and provide data importer with a reasonable period of time to cure the non-compliance ("**Cure Period**").
4. If after the Cure Period the data importer has not or cannot cure the non-compliance then the data exporter may suspend or terminate the transfer of personal data immediately. The data exporter shall not be required to provide such notice in instance where it considers there is a material risk of harm to data subjects or their personal data.

#### **Clause 8.9: Audit:**

1. Data exporter acknowledges and agrees that it exercises its audit right hereunder by instructing data importer to comply with the audit measures described in Section 4 (Security and Audits) of the DPA.

#### **Clause 9(c): Disclosure of subprocessor agreements**

1. The parties acknowledge the obligation of the data importer to send promptly a copy of any onward subprocessor agreement it concludes under the Clauses to the data exporter.
2. The parties further acknowledge that, pursuant to subprocessor confidentiality restrictions, data importer may be restricted from disclosing onward subprocessor agreements to data exporter. Notwithstanding this, data importer shall use reasonable efforts to require any subprocessor it appoints to permit it to disclose the subprocessor agreement to data exporter.
3. Even where data importer cannot disclose a subprocessor agreement to data exporter, the parties agree that, upon the request of data exporter, data importer shall (on a confidential basis) provide all information it reasonably can in connection with such subprocessor agreement to data exporter.

#### **Clause 12: Liability**

1. Any claims brought under the Clauses shall be subject to the terms and conditions, including but not limited to the liability distribution mechanisms and other limitations, set forth in the Agreement. In no event shall any party limit its liability with respect to any data subject rights under these Clauses.