

**ELASTIO
SUBSCRIPTION AGREEMENT**

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE DOWNLOADING, INSTALLING, OR USING THE SUBSCRIPTION SERVICES (AS DEFINED BELOW) THAT ACCOMPANIES THIS SUBSCRIPTION AGREEMENT, THE DELIVERY SERVICES THAT MAY BE USED TO PROVIDE ACCESS TO SUCH SUBSCRIPTION SERVICES, OR ANY ACCOMPANYING DOCUMENTATION.

ABOUT THIS AGREEMENT. This Subscription Agreement governs the purchase of subscriptions to, and use of, the products and services ordered by Customer (as defined below) as such products and services are described at www.elastio.com and/or on your Order Form, if applicable and any updates thereto provided by Elastio (“**Subscription Services**”). This Subscription Agreement, together with all applicable policies and supplements, constitute the entire agreement (“**Agreement**”) between Elastio Inc., a Delaware corporation (“**Elastio**”) and the customer subscribing to the Subscription Services (“**Customer**,”) with respect to the subject matter of this Agreement and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the parties with respect to its subject matter, and neither of the parties will be bound by any conditions, inducements or representations other than as expressly provided for herein.

ACCEPTANCE OF THIS AGREEMENT. BY CLICKING TO ACCEPT WHERE INDICATED OR BY DOWNLOADING, INSTALLING OR USING THE SUBSCRIPTION SERVICES, CUSTOMER HAS INDICATED THAT CUSTOMER UNDERSTANDS THE AGREEMENT (INCLUDING ALL APPLICABLE POLICIES AND SUPPLEMENTS) AND AGREES TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS.

LEGAL CAPACITY TO ACCEPT THIS AGREEMENT

- If Customer is an individual purchasing Subscription Services on behalf of his or her employer or in the name of a corporate entity, such individual represents that it has the authority to bind the entity that it represents to this Agreement and all references in this Agreement to “Customer” applies to such entity.
- If Customer is purchasing Subscription Services in its individual capacity, Customer represents that he or she is at least 18 years old or the age of majority as determined by the laws of Customer’s place of residency and all references in this Agreement to “Customer” apply to Customer in its individual capacity.
- Each of Elastio and Customer are referred to as a “**Party**” and collectively as the “**Parties**”.

Electronic Signature and Disclosure Consent Notice.

- Customer agrees to the use of electronic documents and records in connection with Customer’s use of the Subscription Services and all future documents and records in connection with the Subscription Services—including without limitation this electronic signature and disclosure notice—and that this use satisfies any requirement that Elastio provide Customer these documents and their content in writing. **If Customer does not agree, do not accept this Agreement.**
- Customer may (i) obtain a copy of this Agreement at www.elastio.com/subscription-agreement or by contacting us through the Tenant Console, (ii) withdraw Customer’s consent to the use of electronic documents and records, or (iii) update Customer’s contact information by communicating with us via the Tenant Console.
- If Customer withdraws its consent to the use of electronic documents and records, Elastio may cancel this Agreement and deactivate the Services and Customer will not be entitled to a refund for any unused portion of the Subscription Services. To receive or access electronic documents and records, Customer must have the following equipment and software: (i) a device that is capable of accessing the Internet; (ii) an Internet browser that supports HTML 4.0 and 128-bit SSL encryption; and (iii) software that permits Customer to receive and access Portable Document Format or “PDF” files and email. To retain documents and records, Customer’s device must have the ability to download and store PDF files. Customer’s access to this page verifies that Customer’s system and device meets the above receipt, access, and retention requirements.

AVAILABLE SUBSCRIPTION OPTIONS. Customer may elect to purchase Subscription Services under one of the following models:

Consumption Subscription. The standard subscription available for purchase through Elastio’s website located at www.elastio.com or through one of its resale channels (such as AWS Marketplace) is a month-to-month consumption-based subscription that is subject to the following terms and conditions:

- Month to month Subscription Term.
- Fees charged are based on the highwater mark of the amount of data that is backed up in the applicable 30-day period across all accounts that Customer has registered for the Subscription Services.
- Customer may cancel its subscription at any time and the amount of the final subscription due to prorated to that day and based on the highwater during that period.
- Fees are those published at Elastio’s website located at www.elastio.com or through one of its resale channels (such as AWS Marketplace) when Customer subscribes to the Subscription Services and are subject to change upon notice from Elastio. Changes to fees will become effective 30 days after notice of a fee change unless Customer cancels its subscription prior to that date; otherwise, continued use of the Subscription Services will be deemed Customer’s acceptance of the fee change.
- Customer’s payment card will be charged automatically following at end of each 30-day period at the subscription rate in effect at the beginning of such 30-day period, plus taxes and other applicable charges.

Committed Subscription. The Committed Subscription model is subject to the following terms and conditions:

- Customer and Elastio enter into a mutually acceptable ordering document for the purchase of Subscription Services that (i) reference this Agreement, (ii) designates the length of the Subscription Term and the applicable subscription fee and highwater mark on which the fee is based, and (iii) is signed by Customer and Elastio (“**Order Form**”). A purchase order Customer issues is not considered an Order Form. If Customer enters into an Order Form with

Elastio, this Subscription Agreement is incorporated by reference therein and together with the Order Form, constitute the entire “Agreement” between Customer and Elastio. In the event of any conflict between this Agreement and an Order Form, the Order Form controls.

- The Order Form represents a firm commitment by Customer.
- If Customer continues to use the Subscription Services following the end of a committed Subscription Term, Customer’s use of the Subscription Services automatically converts to a Consumption Subscription and all fees and terms applicable to a Consumption Subscription will apply.

AUTO-RENEWAL. REGARDLESS OF THE SUBSCRIPTION MODEL SUBSCRIBED BY CUSTOMER, THE SUBSCRIPTION TERM WILL AUTOMATICALLY RENEW FOR ADDITIONAL MONTH-TO-MONTH PERIODS AND CUSTOMER’S PAYMENT ACCOUNT ON FILE (E.G., CREDIT CARD) WILL AUTOMATICALLY BE CHARGED AT THE SUBSCRIPTION RATE THEN IN EFFECT, PLUS TAXES AND OTHER APPLICABLE CHARGES, UNLESS CUSTOMER’S SUBSCRIPTION IS CANCELLED BY CUSTOMER OR BY ELASTIO AS ALLOWED BY THIS AGREEMENT.

DISPUTE RESOLUTION. THIS AGREEMENT CONTAINS A DISPUTE RESOLUTION AND ARBITRATION PROVISION, INCLUDING CLASS ACTION WAIVER THAT MAY AFFECT CUSTOMER’S RIGHTS UNDER THIS AGREEMENT AND WITH RESPECT TO DISPUTES CUSTOMER MAY HAVE WITH ELASTIO. Please refer to Section 11 (Dispute Resolution and Arbitration; Class Action Waivers).

CUSTOMER’S RIGHT TO CANCEL THE SUBSCRIPTION. If Customer is using the Subscription Services pursuant to a Consumption Subscription, Customer may cancel its subscription for convenience from the Tenant Console. If Customer is using the Subscription Services pursuant to a Committed Subscription, its subscription is non-cancellable by Customer. The effective date of cancellation is when all Customer Content has been removed from the Subscription Services and the Subscription Services are deactivated.

1. DEFINITIONS

Capitalized terms not otherwise defined in the Agreement have the meanings set forth below:

1.1 “Authorized User” means: (a) Customer alone if Customer is purchasing a subscription in Customer’s individual capacity; and (b) if Customer is purchasing on behalf of its employer or other corporate entity, any individual, including Customer’s employees, agents, and contractors, authorized by Customer to access or use the Subscription Services, under the rights granted to Customer pursuant to the Agreement.

1.2 “Confidential Information” means all written or oral information, disclosed by a Party to the other Party, that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the foregoing, the Subscription Services and Service Documentation, including without limitation any components thereof and any code, technology, know-how, ideas, algorithms, testing procedures, structure, interfaces, specifications, documentation, bugs, problem reports, analysis and performance information, and other technical, business, product, and data provided as part of the Subscription Services or Service Documentation or in connection therewith are deemed the Confidential Information of Elastio.

1.3 “Customer Content” means Customer’s data, media, content and Confidential Information that is provided by Customer to Elastio through Customer’s use of the Subscription Services.

1.4 “Service Documentation” means the Service Descriptions located at www.elastio.com and any rules, policies, and procedures of Elastio regarding use of the Subscription Services, including the Support Services Policy, that, in each case, are referenced in the Agreement or an Order Form or otherwise made available from time to time to Customer through the Elastio Tenant Console located at www.elastio.com.

1.5 “Subscription Term” means the period commencing on the start date of the Subscription Services subscribed by Customer and continuing until cancelled or terminated in accordance with the Agreement.

1.6 “Support Services” means the support services described in the Support Services Policy.

1.7 “Support Services Policy” means described in the Support Services Policy available at www.elastio.com/support-policy.

1.8 “Tenant Token” means a security token used to allow Customer and Authorized Users to access Customer’s tenant console.

2. ACCESS AND USE

2.1 Provision of Access. Subject to the terms and conditions contained in the Agreement, including Customer’s compliance with the Service Documentation, Elastio hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicenseable right to access the features and functions of the Subscription Services during the Subscription Term, solely for use by Authorized Users in accordance with the Agreement and for the sole purpose of supporting Customer’s internal business operations (or in the event Customer is subscribing in his or her individual capacity, Customer’s own personal use). Customer hereby agrees not to use the Subscription Services or any Service Documentation to provide services to any third party nor for any service bureau, time-sharing or similar arrangement. Customer acknowledges and agrees that nothing in this license grant or otherwise in this Agreement grants Customer any right or license to source code underlying the Subscription Services.

2.2 Service Documentation License. Subject to the terms and conditions contained in the Agreement, Elastio hereby grants to Customer a limited, non-exclusive, non-transferable license to use the Service Documentation during the Subscription Term solely for the same purpose for which Customer have been granted use of the Subscription Services above.

2.3 Restrictions. Customer shall not (and shall not allow any third party to): (a) decompile, disassemble, or otherwise reverse engineer the Subscription Services or its underlying software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Subscription Services or its underlying software by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and then only with prior written notice to the respective owners;); (b) distribute, sell, sublicense, rent, lease or use the Subscription Services (or any portion thereof) for time sharing, hosting, provision of services or like purposes; (c) remove any product identification, proprietary, copyright or other notices contained in the Subscription Services; (d) modify or create a derivative work of any part of the Subscription Services or use the Subscription Services to offer services derived from the Subscription Services (or any portion thereof); or (e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Subscription Services. You may not permit third parties to benefit from the use or functionality of the Subscription Services, except as and only to the extent explicitly permitted by the licensing terms governing the use of such third party software.

2.4 Availability; Support and Updates. Subject to the terms and conditions of the Agreement, Elastio will use commercially reasonable efforts to make the Subscription Services available and otherwise provide Support Services in accordance with the Support Services Policy. From time to time, Elastio may, but has no obligation to, provide updates to the Subscription Services. Elastio specifically reserves the right to cease providing, updating, maintaining or supporting the Subscription Services at any time in its sole discretion.

2.5 Optional Software Utilities, Early Access Features and Early Access Releases. From time-to-time, Elastio, at its sole discretion, may make available to Customer optional products and services, including but not limited to utilities for supporting the usage of Elastio Subscription Services, early access features that can be enabled within the Subscription Services, and early releases of products and services (collectively “**Optional Items**”). Unless a particular Optional Item includes its own separate and specific terms and conditions, this Agreement will govern the usage of Optional Items. Subject to the terms and conditions of this Agreement, Elastio hereby grants Customer a limited, non-exclusive, non-transferable license to access and use the Optional Items solely in executable form and solely for purposes of supporting the Subscription Services and to the same extent as Customer is permitted to use the Subscription Services, and/or in the case of early access features and releases, for evaluation purposes. Products and services such as Optional Items are sometimes provided by software providers as preview releases of new features and programs, as well as quick fixes for resolving specific issues. Optional Items are not fully tested by Elastio and may include significant issues. Customer acknowledges and agrees that Optional Items are likely to present risks associated with their use. Elastio strongly recommends that Customer backs up all of the Customer Content and other data prior to using such type of software from any source. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, OPTIONAL ITEMS ARE PROVIDED “AS IS”, AND DO NOT CARRY ANY WARRANTIES OR MAINTENANCE OR SUPPORT; SIMILARLY, IN NO EVENT WILL ELASTIO BE LIABLE FOR ANY DAMAGE ARISING FROM THE USE OF OPTIONAL ITEMS.**

2.6 Third Party Data. The Subscription Services may require use of software code, data or other content owned by and licensed from third parties (the “**Third Party Data**”). In all cases when Elastio includes Third Party Data as part of the Subscription Services, Elastio provides it to Customer on either a sublicense or pass-through basis subject to the separate terms and conditions of its owners and licensors. Elastio does not have the authority to modify those terms and conditions. Elastio hereby agrees that it has the authority to grant Customer the rights granted under each license, even to the extent Elastio provides Third Party Data in the applicable Subscription Services.

3. CUSTOMER OBLIGATIONS

3.1 Customer Account. Customer is responsible for granting user credentials, including but not limited to Tenant Tokens, to Authorized Users for access to the Subscription Services. Customer acknowledges and agrees that, as between Customer and Elastio, Customer will be responsible for all acts and omissions of Authorized Users and any other persons using Customer’s account or user credentials, including but not limited to Tenant Tokens. Customer will be responsible for making all Authorized Users aware of the provisions of the Agreement as applicable to such Authorized User’s use of the Subscription Service and for their compliance with all such provisions. Customer agrees to comply, and agree to ensure that all Authorized Users comply, with all applicable laws and regulations as well as the Elastio Acceptable Use Policy available at www.elastio.com/acceptable-use-policy.

3.2 Customer Access. Customer is responsible for procuring (and the associated costs) of all infrastructure services, hardware, software, connectivity, bandwidth and other technologies and services required for Customer and Authorized Users to access the Subscription Services. Customer also is responsible for all expenses incurred by Customer in performance of its obligations under the Agreement, including any increases in Fees (as defined below) resulting from such Customer’s responsibility under this Section. Customer is solely responsible for the data, software and other Customer Content carried on Customer’s devices and for backing-up Customer data, software and other Customer Content.

3.3 Assistance to Elastio. Customer will provide, at Customer’s own expense, assistance to Elastio, including, but not limited to, by means of access to, and use of, Customer’s facilities and equipment, as well as by means of assistance from Customer’s personnel, to the extent any of the foregoing may be reasonably necessary to enable Elastio to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services performed.

4. FEES AND EXPENSES; PAYMENTS

4.1 Fees. Fees for the Subscription Services (“**Fees**”) vary based on the subscription model to which Customer subscribes as described at the beginning of the Agreement.

4.2 Payment Method. Elastio accepts payment by credit card and Fees and payments are in U.S. Dollars unless otherwise specified. Elastio does not accept debit cards or gift cards for recurring payment plans. Customer’s outstanding balance is due in full for each service period (monthly, annual or other mutually agreed period) during the Subscription Term. If Customer provides payment account information directly to Elastio, then Customer represents that it is an authorized user of such payment account. If Customer’s payment card provider refuses a charge or an automated withdrawal, Elastio may terminate or suspend Customer’s Subscription Service. Customer is responsible at all times for keeping its payment information current with Elastio. Elastio may receive and use updated payment card information from Customer’s credit card issuer. Customer’s credit card issuer may give Customer the right to opt out of the update service.

4.2 Taxes. Customer will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Elastio’s income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. All required payments to Elastio will be made free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to Elastio will be Customer’s sole responsibility, and Customer will, upon Elastio’s request, provide Elastio with official receipts issued by the appropriate taxing authorities, or such other evidence as Elastio may reasonably request, to establish that such taxes have been paid.

4.3 Late Payments; Interest. Any portion of any amount payable hereunder that is not paid when due will accrue interest at one percent (1.0%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. If Customer objects to any fees or charges for Subscription Services billed by or through Elastio or its resellers, Customer must inform Elastio in writing within sixty (60) days after the fee or charge is incurred (unless the law does not allow a limit or requires a longer period), **OR CUSTOMER AUTOMATICALLY WAIVES THE DISPUTE.**

4.4 Failure to Pay. If Customer’s primary payment method fails or amounts due on Customer’s account are past due, Customer hereby authorizes Elastio to charge all additional payment methods Elastio has on file for Customer’s account or to bill Customer directly and to employ all legal methods available to collect the amounts, including but not limited to, the engagement of collection agencies or legal counsel. The collection agencies Elastio retains also may report information about Customer’s account to credit bureaus, and as a result, late payments, missed payments or other defaults on Customer’s account may be reflected in Customer’s credit report. If Customer’s account is past due or if Customer’s payment method provider rejects any payment that is owed to Elastio, Elastio may restrict, suspend, cancel, or terminate Customer’s Subscription Services and/or Customer’s right to access its account and/or the Subscription Services. If there are ongoing issues with payment card billings, then the Subscription Services and/or Agreement may be terminated immediately in Elastio’s sole discretion. Elastio will not be responsible under any circumstances for any overdraft or other fees charged by Customer’s payment provider or bank. Elastio may use third parties to collect amounts owed by Customer, and Customer will be responsible for any collection or similar fees associated with these collection activities.

5. PROPRIETARY RIGHTS

5.1 Retained Rights; Ownership. Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Elastio and its licensors retain all right, title and interest in and to the Subscription Services and its components, including any databases used by Elastio or the Subscription Services, and all copies, modifications and derivative works thereof and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by the Agreement. Customer acknowledges that it is obtaining only a limited license right to the Subscription Services and that irrespective of any use of the words “purchase”, “sale” or like terms hereunder no ownership rights are being conveyed to Customer under this Agreement or otherwise. As between the Parties, Elastio acknowledges and agrees that Customer retains all right, title, and interest in and to all Customer Content and all

information, data, or files derived or generated from such Customer Content through use of the Subscription Services. The Bitdefender SDK made available as part of this Agreement is © Bitdefender 1997-2022.

5.2 Exchange of Confidential Information. The Parties acknowledge that during the performance of the Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.

5.3 Mutual Confidentiality Obligations. Each Party agrees as follows: (a) to use Confidential Information disclosed by the other Party only for the purposes of using, receiving and providing the Subscription Services; (b) the receiving Party will not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party with the exception of Authorized Users; (c) neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (d) the receiving Party will restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who are subject to obligations of confidentiality and non-disclosure protecting the Confidential Information of the disclosing Party that are no less stringent than those set forth in the Agreement; and (e) to return or destroy, pursuant to Section 9, all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of the Subscription Term.

5.4 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 5.2 and 5.3 will not apply to any item of Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the receiving Party; (c) is rightfully communicated to the receiving Party by persons not bound by confidentiality obligations with respect thereto; (d) is already in the receiving Party's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the receiving Party without reliance upon Confidential Information of the disclosing Party; or (f) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order will first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under the Agreement, including to make such court filings as it may be required to do.

5.5 Data Protection. The terms and conditions governing Elastio's data collection and usage are set forth in the Privacy Policy which is available at www.elastio.com/privacy-policy. Customer acknowledges and agrees to the terms and conditions of the Privacy Policy. Notwithstanding anything to the contrary set forth in the Privacy Policy, Customer further agrees that Elastio may track certain meta-data it obtains from Customer's backups, including information about backup sizes, frequency, any malicious software detected by Elastio's ransomware detection feature, exploits or other threats flagged by the Subscription Services (including but not limited to potential sources of such threats, such as payload files, file format and recent URL's visited), data about Customer's license, data about what version of the Subscription Services are being used and what operating conditions they are running under and data concerning Customer's geographic location. This information is collected and used for the purpose of tracking malicious software, exploits and other threats, and evaluating and improving Elastio's products and services. Elastio may share de-identified data relating to malicious software, exploits or other threats flagged by the Subscription Services with third parties for the purpose of providing the Subscription Services. In the event that any user who operates the Subscription Services as permitted under this Agreement (including, Customer's Authorized Users) makes a complaint or claim based on the tracking or collection of data in accordance with this Section 5.5, Customer will be solely responsible for addressing any such complaints or claims.

5.6 Feedback. Customer hereby does and will irrevocably assign to Elastio all evaluations, ideas, feedback, and suggestions made by Customer to Elastio regarding the Subscription Services and all intellectual property rights therein. Customer agrees that Elastio may collect aggregated statistical data regarding Customer's use of the Subscription Services and provide such aggregated de-identified statistical data to third parties.

6. REPRESENTATIONS AND WARRANTIES

6.1 Mutual. Each Party hereby represents and warrants (a) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization and (b) that the Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

6.2 Elastio Warranty. Elastio will use industry standard practices designed to detect and protect the Subscription Services against any viruses, "Trojan horses", "worms", spyware, adware or other harmful code designed or used for unauthorized access to or use, disclosure, modification or destruction of information within the Subscription Services or interference with or harm to the operation of the Subscription Services or any systems, networks or data, including as applicable using anti-malware software and keeping the anti-malware software up to date prior to making the Subscription Services available to Customer, and scanning the Subscription Services on a regular basis. **CUSTOMER'S EXCLUSIVE REMEDY AND ELASTIO'S ENTIRE LIABILITY FOR NON-COMPLIANCE WITH THE WARRANTY UNDER THIS SECTION 6.2 IS FOR ELASTIO TO PROVIDE CUSTOMER WITH A CONFORMING SUBSTITUTE OR, IF ELASTIO IS UNABLE TO PROVIDE SUCH SUBSTITUTE OR CORRECTIVE ACTION, CUSTOMER MAY TERMINATE THE AGREEMENT WITHOUT PENALTY OR PAYMENT OF ANY EARLY TERMINATION FEE AND ELASTIO WILL REFUND CUSTOMER THE PRO RATA PORTION OF ANY FEES THAT HAVE BEEN PAID BY CUSTOMER FOR THE SUBSCRIPTION TERM, WHICH WILL BE PRORATED FOR THE REMAINING PERIOD OF THE SUBSCRIPTION TERM FOLLOWING THE EFFECTIVE DATE OF TERMINATION.**

6.3 Customer's Representations and Warranties. Customer represents and warrants to Elastio that Customer owns or has acquired, and will maintain all necessary rights, power, and authority to provide and use, all of the Customer Content. Customer represents and warrants that Customer will not use the Subscription Services to process any personal or sensitive information nor in violation of any applicable laws.

7. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY

7.1 Disclaimer. EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 6, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SUBSCRIPTION SERVICES, THE SERVICE DOCUMENTATION, AND ALL SERVICES PERFORMED BY ELASTIO ARE PROVIDED "AS IS" AND ELASTIO AND ITS LICENSORS AND SUPPLIERS DISCLAIM ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. ELASTIO SPECIFICALLY DISCLAIMS ANY WARRANTY OR REPRESENTATION AS TO THE SUBSCRIPTION SERVICES' ABILITY TO ELIMINATE ANY SPECIFIC MALWARE THREATS OR THE COMPLETENESS OF THE DATABASE OR PROTECTION MODULES. ELASTIO, ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS, DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES, INCLUDING THE SUBSCRIPTION SERVICES OR ANY OTHER SERVICES PROVIDED BY ELASTIO WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. THE PARTIES ACKNOWLEDGE AND AGREE THAT ELASTIO IS NOT OBLIGATED TO OBTAIN ANY REGULATORY APPROVALS THAT MAY BE NECESSARY UNDER THE AGREEMENT. THE SUBSCRIPTION SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN

ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. THE SUBSCRIPTION SERVICES ARE NOT FOR USE IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT SYSTEMS, AIR TRAFFIC CONTROL, OR ANY APPLICATION OR INSTALLATION WHERE FAILURE COULD RESULT IN DEATH, SEVERE PHYSICAL INJURY OR PROPERTY DAMAGE

7.2 Exclusions of Remedies; Limitation of Liability. IN NO EVENT WILL ELASTIO OR ITS LICENSORS AND SUPPLIERS BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, SYSTEM DOWNTIME, FAILURE OF SECURITY MECHANISMS, GOODWILL, PROFITS OR OTHER BUSINESS LOSS OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, REGARDLESS OF THE NATURE OF THE CLAIM, EVEN IF ELASTIO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE CUMULATIVE LIABILITY OF ELASTIO FOR ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT OR THE SUBSCRIPTION SERVICES, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO ELASTIO FOR THE AFFECTED SUBSCRIPTION SERVICE DURING THE APPLICABLE SERVICE PERIOD (i.e., MONTHLY FOR A STANDARD SUBSCRIPTION OR FOR A COMMITTED SUBSCRIPTION, THE DURATION OF THE COMMITTED SERVICE PERIOD IN WHICH THE CLAIM AROSE OR 12 MONTHS OF FEES PAID, WHICHEVER IS LESS).

7.3 Essential Basis of the Agreement. CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 7 FORM AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN THE PARTIES, THAT THE PARTIES HAVE RELIED UPON SUCH DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY IN NEGOTIATING THE TERMS AND CONDITIONS IN THE AGREEMENT, AND THAT ABSENT SUCH DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY, THE TERMS AND CONDITIONS OF THE AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT. THIS SECTION SHALL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT SHALL BE FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

8. INDEMNIFICATION

8.1 Indemnification of Customer. Elastio agrees to indemnify, defend and hold Customer harmless from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party that the Subscription Services and/or the Service Documentation infringes or misappropriates, as applicable, such third party's copyrights or trade secret rights under applicable laws of any jurisdiction, provided that Customer promptly notifies Elastio in writing of the claim, cooperate with Elastio, and allow Elastio sole authority to control the defense and settlement of such claim. The foregoing will not apply to the extent that the alleged claim arises from (a) modification of any of the Subscription Services by Customer, (b) combination, operation or use of any of the Subscription Services with other software, hardware, content, data or technology not provided by Elastio, (c) use of a superseded or altered release of any of the Subscription Services, if such infringement would have been avoided by the use of a then-current release of the Subscription Services, as applicable, and if such then-current release has been made available to Customer, or (d) any Customer Content (any of the foregoing circumstances under clauses (a), (b), (c), or (d) a "**Customer Indemnity Responsibility**"). If such a claim is made or appears likely to occur, Customer agrees to permit Elastio, at Elastio's sole discretion, to enable Customer to continue to use the Subscription Services or the Service Documentation, as applicable, or to modify or replace any such infringing material to make it non-infringing, or to obtain rights to continue use. If Elastio determines that none of these alternatives are reasonably available, Customer will, upon written request from Elastio, cease use of, and, if applicable, return, such materials as are the subject of the claim. THIS SECTION STATES ELASTIO'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION.

8.2 Customer's Indemnity Obligations. Customer agrees to indemnify, defend, and hold Elastio, its affiliates and their respective directors, officers, employees, agents and representatives ("**Elastio Indemnified Parties**") harmless from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from (a) Customer's or any Authorized User's negligence or willful misconduct or breach of this Agreement; (b) Customer's or any Authorized User's use of the Subscription Services in a manner not authorized or contemplated by the Agreement, including but not limited to violation of the Service Documentation; (c) Customer Content; or (d) a Customer Indemnity Responsibility, provided that Customer will not settle any third-party claim against any of the Elastio Indemnified Parties unless such settlement completely and forever releases all of them from all liability with respect to such claim or unless Elastio consents to such settlement, and further provided that Elastio will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice. IF CUSTOMER HAS AUTHORIZED CHARGES FOR AMOUNTS DUE AGAINST CUSTOMER'S PAYMENT ACCOUNT, BY GIVING ELASTIO CUSTOMER'S PAYMENT ACCOUNT INFORMATION, THEN CUSTOMER'S AGREEMENT IN THIS SECTION EXTENDS TO CLAIMS, EXPENSES, LIABILITIES, OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH USE OR OWNERSHIP OF THE PAYMENT ACCOUNT, OR OTHER SIMILAR PAYMENT ACCOUNT, OR FROM THE ISSUER'S REFUSAL TO PAY AMOUNTS CHARGED TO SUCH ACCOUNT.

9. TERM AND TERMINATION

9.1 Term. The term of the Agreement is coterminous with the applicable Subscription Term.

9.2 Termination for Breach. Either Party may, at its option, terminate the Agreement in the event of a material breach by the other Party, provided such Party has provided written notice to the other Party specifically identifying the breach or breaches on which such notice of termination is based. The other Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and the Agreement will terminate in the event that such cure is not made within such thirty (30) day period. For purposes of clarity, Customer's (a) non-payment of Fees validly due and payable under the Agreement and/or (b) provision of false, inaccurate, dated or unverifiable identification or payment information will be deemed a material breach.

9.3 Termination Upon Bankruptcy or Insolvency. Either Party may, at its option, terminate the Agreement immediately upon written notice to the other Party, in the event (a) that the other Party becomes insolvent or unable to pay its debts when due; (b) the other Party files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (c) the other Party discontinues its business; or (d) a receiver is appointed or there is an assignment for the benefit of such other Party's creditors.

9.4 Effect of Termination. Upon any termination of the Agreement or the Subscription Services, (a) Customer will discontinue all use of the terminated Subscription Services, the Service Documentation, and any Elastio Confidential Information as of the effective date of termination; (b) each Party will delete any of the other Party's Confidential Information from computer storage or any other media including, but not limited to, online and off-line libraries; (c) each Party will return to the other Party or, at the other Party's option, destroy, all copies of any Confidential Information then in its possession; and (d) Customer promptly will pay to Elastio all amounts due to Elastio for the terminated Subscription Services. CUSTOMER WILL NOT BE ENTITLED TO ANY REFUND OF ANY PRE-PAID AMOUNTS UNLESS OTHERWISE STATED IN THE AGREEMENT. The effective date of termination is when all Customer Content has been removed from the Subscription Services and the Subscription Services are deactivated.

9.5 Removal of Customer Content. No later than thirty (30) days following the termination of the Agreement, Customer will deactivate Customer's account with Elastio and remove all Customer Content. After such thirty (30) day period, Elastio has the right, but not the obligation, to delete any and all Customer Content from

its systems and deactivate Customer's account. If this Agreement is terminated by Elastio, Elastio has the right to suspend Customer's use of the Subscription Services immediately.

9.6 Survival. Those provisions of the Agreement that by their nature or their terms survive termination or expiration of the Agreement will so survive including but not limited to Sections 2.3, 4, 5, 7, 8, 9.4, 9.5, 9.6, 10 and 11.

10. DISPUTE RESOLUTION AND ARBITRATION; CLASS ACTION WAIVER

10.1 Please read this Provision (this "Provision") carefully. It affects Customer's rights. It provides that all Disputes between Customer and Elastio will be resolved by binding arbitration. Arbitration is a form of private dispute resolution in which persons with a dispute waive their rights to file a lawsuit, to proceed in court and to a jury trial, and instead submit their disputes to a neutral third person (or arbitrator) for a binding decision. **If Customer is entering into this Agreement in Customer's capacity as an individual customer of Elastio and not as a corporate user,** Customer has the right to opt-out of this Provision (as explained below), which means Customer would retain Customer's right to litigate Customer's Disputes in a court, either before a judge or jury.

Arbitration replaces the right to go to court. In the absence of this arbitration agreement, Customer may otherwise have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). Except as otherwise provided, entering into this Agreement constitutes a waiver of Customer's right to litigate claims and all opportunity to be heard by a judge or jury. There is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow this Agreement and can award the same damages and relief as a court (including attorney's fees).

For the purpose of this Provision, the term "**Dispute**" means any dispute, claim, or controversy between Customer and Elastio regarding, arising out of or relating to any aspect of Customer's relationship with Elastio, whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence), or any other legal or equitable cause of action or claim for relief, and includes the validity, enforceability or scope of this Provision (with the exception of the enforceability of the Class Action Waiver clause below). "Dispute" is to be given the broadest possible meaning that will be enforced, and will include any claims against other parties relating to services or products provided or billed to Customer in connection with Customer's subscription (such as Elastio's licensors, suppliers, dealers or third-party vendors) whenever Customer also asserts claims against Elastio in the same proceeding.

THE PARTIES EACH AGREE THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS PROVISION.

10.2 Pre-Arbitration Claim Resolution. For all Disputes, whether pursued in court or arbitration, Customer must first give Elastio an opportunity to resolve the Dispute. Customer must commence this process by mailing written notification to Elastio at 11921 Freedom Drive, Two Fountain Square, Suite 550, Reston, VA 20190, USA, Attention: Legal. That written notification must include (1) Customer's name, (2) Customer's address, (3) a written description of Customer's claim, and (4) a description of the specific relief Customer seeks. If Elastio does not resolve the Dispute within 45 days after it receives Customer's written notification, Customer may pursue Customer's Dispute in arbitration. If Customer is entering into this Agreement in Customer's capacity as an individual customer of Elastio and not as a corporate user, Customer may pursue Customer's Dispute in a court only under the circumstances described below.

10.3 Exclusions from Arbitration/Right to Opt Out. Notwithstanding the above, Customer or Elastio may choose to pursue a Dispute in court and not by arbitration if (a) the Dispute qualifies, it may be initiated in small claims court; or (b) **CUSTOMER OPTS-OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE THAT CUSTOMER FIRST CONSENTS TO THIS AGREEMENT (the "Opt-Out Deadline").** Customer may opt out of this Provision by mailing written notification to Elastio at 11921 Freedom Drive, Two Fountain Square, Suite 550, Reston, VA 20190, USA, Attention: Legal. That written notification must include (1) Customer's name, (2) Customer's address, and (3) a clear statement that Customer does not wish to resolve disputes with Elastio through arbitration. Customer's decision to opt-out of this Provision will have no adverse effect on Customer's relationship with Elastio. **Any opt-out request received after the Opt-Out Deadline will not be valid and Customer must pursue Customer's Dispute in arbitration or small claims court. Customer's rights under this Section 10.3 only apply if Customer is entering into this Agreement in Customer's capacity as an individual customer of Elastio and not as a corporate user.**

10.4 Arbitration Procedures.

(a) If this Provision applies and the Dispute is not resolved as provided above (Pre-Arbitration Claim Resolution) either Customer or Elastio may initiate arbitration proceedings. The American Arbitration Association ("AAA"), www.adr.org, or JAMS, www.jamsadr.com, will arbitrate all Disputes, and the arbitration will be conducted before a single arbitrator. The arbitration will be commenced as an individual arbitration only and will in no event be commenced as a class arbitration or a consolidated or representative action or arbitration. All issues will be for the arbitrator to decide, including the scope of this Provision.

(b) For arbitration before AAA, for Disputes of less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA's Commercial Arbitration Rules will apply. In either instance, the AAA's Optional Rules For Emergency Measures Of Protection will apply. The AAA rules are available at www.adr.org or by calling 1-800-778-7879. For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols For Domestic, Commercial Cases will apply. The JAMS rules are available at www.jamsadr.com or by calling 1-800-352-5267. This Provision governs in the event it conflicts with the applicable arbitration rules. Under no circumstances will class action or representative action procedures or rules apply to the arbitration.

(c) Because the Services and this Agreement concern interstate commerce, the Federal Arbitration Act ("**FAA**") governs the arbitrability of all Disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

10.5 Arbitration Award. The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a

statement of reasons unless requested by a Party or if required by applicable law. Such award will be final and binding on the Parties, except for any right of appeal provided by the FAA or other applicable law, and may be entered in any court having jurisdiction over the Parties for purposes of enforcement.

10.6 Location of Arbitration.

- If Customer is entering into this Agreement in Customer's capacity as an individual, the following applies:
 - If Customer is a U.S. citizen or otherwise using the Subscription Services from or within the United States or have provided a billing address in the United States, Customer or Elastio may initiate arbitration in either Customer's U.S. location or the federal judicial district that includes Customer's billing address.
 - If the above does not apply to Customer, then Customer agrees that (a) Elastio may initiate arbitration or other proceedings in (i) the United States in accordance with Section 11.9 and Customer agrees to the exclusive venue therein and/or (ii) the jurisdiction in which Customer resides and (b) to the extent permitted by applicable law, Customer agrees to initiate arbitration or other proceedings in accordance with Section 11.9 or if not permitted, then in the jurisdiction where Customer resides; provided, however, nothing herein shall be deemed to constitute consent by Elastio to the jurisdiction of any court or other forum of any country for the purpose of resolving any Dispute hereunder (other than the courts referenced in Section 11.9).
- If Customer is entering into this Agreement on behalf of a corporate entity, then Customer and Elastio agree to initiate arbitration or other proceedings exclusively in accordance with Section 11.9.

10.7 Payment of Arbitration Fees and Costs. If Customer is entering into this Agreement in Customer's capacity as an individual customer of Elastio and not as a corporate user, Elastio will pay all arbitration filing fees and AAA or JAMS hearing fees and any arbitrator's hearing fees, costs and expenses upon Customer's written request to the arbitrator given at or before the first evidentiary hearing in the arbitration. Customer is responsible for all additional fees and costs that Customer incurs in the arbitration, including, but not limited to, attorneys or expert witnesses. Fees and costs may be awarded as provided pursuant to applicable law. In addition to any rights to recover fees and costs under applicable law, if Customer provides notice and negotiate in good faith with Elastio as provided in Section 10.2 above and the arbitrator concludes that Customer is the prevailing party in the arbitration, Customer will be entitled to recover reasonable attorney's fees and costs as determined by the arbitrator.

10.8 Class Action Waiver. This Section 10.8 only applies to Customer if Customer is entering into this Agreement in Customer's capacity as an individual customer of Elastio and not as a corporate user. Except as otherwise provided in this Provision, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, consolidated action, representative action, or private attorney general action) unless both Customer and Elastio specifically agree to do so in writing following initiation of the arbitration. **If Customer chooses to pursue Customer's Dispute in court by opting out of the Arbitration Provision, as specified above, this Class Action Waiver will not apply to Customer.** Neither Customer, nor any other user of the Subscription Platform can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt-out requirements above.

10.9 Survival. This Provision will survive the expiration or termination of Customer's subscription or this Agreement for any reason.

11. MISCELLANEOUS

11.1 Independent Contractors. In making and performing the Agreement, Customer and Elastio act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in the Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

11.2 Notices. All notices to be given in connection with the Agreement will be given in writing in English and will be effective upon delivery. Notices will be delivered through the Elastio Tenant Console unless other contact information is provided in the Agreement.

11.3 Amendments; Modifications. The Agreement may be amended or modified by Elastio from time to time and notice of such amendment or modification will be given electronically through the Elastio Tenant Console. Customer may not amend or modify this Agreement without the prior written consent of Elastio.

11.4 Assignment; Delegation. Neither Party will assign any of its rights or delegate any of its duties under the Agreement without the express, prior written consent of the other Party, and, absent such consent, any attempted assignment or delegation will be null, void and of no effect. Notwithstanding the foregoing, Elastio may assign the Agreement, without consent, in connection with a merger, sale, transfer or other disposition of all or substantially all of its stock or assets to which this Agreement relates.

11.5 No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in the Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, the Elastio Indemnified Parties and their respective successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of the Agreement.

11.6 Severability. If any provision of the Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in the Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of the Agreement invalid or unenforceable whatsoever. If the Class Action Waiver provision is found to be invalid, illegal, or unenforceable, the entire Provision (i.e., Section 10) will be unenforceable and the Dispute will be decided by a court of competent jurisdiction in accordance with the provisions of this Agreement.

11.7 Waiver. No waiver under the Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

11.8 Force Majeure. Except with respect to Customer's payment obligations hereunder, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example and not limitation, war, riot, fires, floods, acts of nature, pandemics, epidemics, public health emergencies, orders of governmental authorities, or failure of public utilities or public transportation systems, such failure or delay will not be deemed to constitute a material breach of the Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than ninety (90) days, the other Party may terminate the Agreement upon thirty (30) days' written notice.

11.9 Governing Law and Venue. THE AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF OR TO THE UNITED NATIONS CONVENTION ON

THE INTERNATIONAL SALE OF GOODS. FOR PURPOSES OF ALL CLAIMS BROUGHT UNDER THE AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS IN WILMINGTON, DELAWARE AND TO THE EXTENT THAT ARBITRATION APPLIES THE ARBITRATION SHALL TAKE PLACE IN WILMINGTON, DELAWARE. THE PARTIES AGREE TO WAIVE AND OPT-OUT OF ANY APPLICATION OF THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT (UCITA), OR ANY VERSION THEREOF, ADOPTED BY ANY STATE OF THE UNITED STATES IN ANY FORM.

11.10 Jury Waiver. CUSTOMER UNDERSTANDS AND AGREES THAT BY ENTERING INTO THIS AGREEMENT CUSTOMER AND ELASTIO ARE EACH WAIVING THE RIGHT TO A JURY TRIAL OR A TRIAL BEFORE A JUDGE IN A PUBLIC COURT. IN THE ABSENCE OF THIS PROVISION, CUSTOMER OTHERWISE HAS HAD A RIGHT OR OPPORTUNITY TO BRING DISPUTES IN A COURT, BEFORE A JUDGE OR JURY, AND/OR TO PARTICIPATE OR BE REPRESENTED IN A CASE FILED IN COURT BY OTHERS (INCLUDING CLASS ACTIONS). EXCEPT AS OTHERWISE PROVIDED BELOW, THOSE RIGHTS ARE WAIVED. OTHER RIGHTS THAT CUSTOMER WOULD HAVE IF CUSTOMER WENT TO COURT, SUCH AS THE RIGHT TO APPEAL AND TO CERTAIN TYPES OF DISCOVERY, MAY BE MORE LIMITED OR MAY ALSO BE WAIVED.

11.11 Time Limits. EXCEPT WHERE PROHIBITED BY LAW, CUSTOMER IS NOT ALLOWED TO BRING ANY CLAIM AGAINST ELASTIO OR THIRD PARTY BENEFICIARIES MORE THAN TWO YEARS AFTER THE CLAIM ARISES.

11.12 U.S. Government End-Users. Each of the Service Documentation and the software components that constitute the Subscription Services is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Subscription Services and the Service Documentation with only those rights set forth therein. If the user or licensee of the Subscription Services is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Subscription Services, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Subscription Services were developed fully at private expense. All other use is prohibited.

11.13 Export Compliance. Customer acknowledges that the Subscription Services may be subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Subscription Service or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Subscription Service is further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

11.14 Counterparts. To the extent applicable, this Agreement and/or an Order Form may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one agreement.

11.15 Headings. The headings in the Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of the Agreement.