

## Elastycloud Premium Magento 2 Hosting

### Master Agreement

This Elastycloud Premium Magento 2 Hosting Master Agreement (“Master Agreement”) is a contract between Elastycloud AB (“Company”) and the person or entity using Company’s Services (“Customer”) and applies to Customer’s use of Company’s Elastycloud Premium Magento 2 Hosting Services.

#### 1. Defined Terms

The following terms and expressions will have the following meanings in this Master Agreement:

|                                |  |
|--------------------------------|--|
| “Acceptable Use Policy”        | means the Google Cloud Platform Acceptable Use Policy as amended from time to time, available at <a href="https://cloud.google.com/terms/aup">https://cloud.google.com/terms/aup</a>   |
| “Account”                      | means login data enabling Customer or persons assigned by Customer to access the Elastycloud Management Panel with limited access compared to the Administrator Account.   |
| “Administrator Account”        | means login data enabling Customer or persons assigned by Customer to access the Elastycloud Management Panel and to apply changes to Subscriptions, technical functions, etc.   |
| “Agreement Term”               | means the initial and/or renewed agreement term as defined in section 7.1.   |
| “Company”                      | means Elastycloud AB.  |
| “Customer”                     | means the person or entity entering into this Master Agreement for using Company’s Services.   |
| “Data Processing Agreement”    | Mean the applicable data processing agreement for the Services according to Art. 28 (3) General Data Protection Regulation (GDPR), to be found at <a href="https://www.elastycloud.com/terms/dpa/">https://www.elastycloud.com/terms/dpa/</a> .  |
| “Elastycloud Management Panel” | means the panel through which Customer can configure its usage of the Services.  |
| “Emergency Security Issue”     | Means circumstances constituting either: (a) Customer’s or Customer’s Merchants use of the Services in violation of the Acceptable Use Policy, in a way that disrupts: (i) the Services; (ii) other customers’ use of the Services; or (iii) the network or servers used to provide the Services; or (b) unauthorised third-party access to the Services or data within the Services (e.g. compromised Administrator Account, hacked webshop), or (c) a criminal offence under applicable law. |
| “Master Agreement”             | means this Elastycloud Premium Magento 2 Hosting Master Agreement and the agreements, exhibits, documents and Policies referred to herein.   |
| “Merchants”                    | shall mean the Customer’s customers as defined in section 4.1.   |
| “Order”                        | means a specific written agreement of Company and Customer relating to Company’s Services.   |
| “Parties”, “Party”             | means Company and Customer, either of them a “Party”.  |
| “Policies”, “Policy”           | means the sets of rules governing Customer’s use of the Services or a specific set of these.   |
| “Description of Services”      | means the document referred to in section 3.1.a).  |
| “Services”                     | means Company’s Elastycloud Premium Magento 2 Hosting Services as described more in detail in this Agreement, the Description of Services, the SLA, the Subscriptions, the Order and the Policies, as described in section 3.1 and the documents referred to therein.  |
| “SLA”                          | means the Service Level Agreement applicable to the Customer’s Subscription(s), to be found at the following link: <a href="https://www.elastycloud.com/terms/sla/">https://www.elastycloud.com/terms/sla/</a> .   |
| “Subscription T&Cs”            | Terms and conditions applicable to a Subscription.   |
| “Subscription Term”            | means the initial term and renewals related to any specific Subscription as described in section 3.2.3.  |

**“Subscription”** means the specific packages and performance parameters related to Company’s Services associated with Customers Administrator Account in the Elastycloud Management Panel, as described in section 3.2.

## 2. Scope, amendments

- 2.1. Company shall render any Services exclusively on the basis of this Master Agreement as well as the applicable Subscription T&Cs. This shall also apply where Customer uses general terms and conditions contrary to or deviating from the Master Agreement or any Subscription T&Cs. The Master Agreement and any Subscription T&Cs shall also apply if Company carries out Customer’s Order without reservation knowing that Customer has such contrary or deviating terms and conditions.
- 2.2. If a conflict between different contractual documents should arise, the following order of precedent shall apply: Order, Subscription and Subscription T&Cs, Master Agreement and Description of Services, other Exhibits and Policies.
- 2.3. If Company processes personal data on behalf of Customer in its capacity as a data Processor under Article 28 of the GDPR (EU General Data Protection Regulation), a Personal Data Processing Agreement will apply in addition to this Master Agreement. The Data Processing Agreement can be found via the following link: <https://www.elastycloud.com/terms/dpa/>.
- 2.4. Taking into account the legitimate concerns of Customer, Company may amend this Master Agreement and any Subscription T&Cs on giving reasonable notice. If Customer does not object to the amendment within a time period defined by Company in the notice, the amendment shall be deemed agreed. Company shall inform Customer about the consequences of Customer’s passivity to the notice.
- 2.5. Company may send notices, information and communications concerning the contractual relationship to Customer’s e-mail address listed in the Elastycloud Management Panel. Customer is obliged to provide the necessary information to Company in a correct and complete manner and to notify any changes without delay. This applies in particular to address details, bank details and e-mail addresses. Customer may send notices and communication to [partner@elastycloud.com](mailto:partner@elastycloud.com).

## 3. Services, Subscriptions, new features and changes

### 3.1. Services

Company agrees to make available services (“**Services**”) to Customer in accordance with

- a) the currently applicable Premium Magento 2 Hosting Description of Services (“**Description of Services**”), as amended,
- b) the Subscription(s) of Customer placed through the Elastycloud Management Panel for certain usage of the Elastycloud Premium Magento 2 Hosting Platform,
- c) the Service Level Agreement (“**SLA**”) applicable for the Customers Subscriptions;
- d) any order confirmed by Company (the “**Order**”), if applicable, and
- e) the Policies applicable to the Services (the “**Policies**”),

in exchange for Customer’s payment for the Services, Customer’s execution and compliance with this Master Agreement and Customer’s compliance with the Agreements and documents referred to in this Master Agreement as well as Company’s Policies as set forth on Company’s website from time to time.

### 3.2. Subscriptions, additional terms and conditions, Subscription Term

- 3.2.1 Based on this Master Agreement, Customer will be able to access the Elastycloud Management Panel through one or several Administrator Accounts and order specific packages and performance parameters (“**Subscriptions**”) related to Company’s Services. For such Subscriptions, this Master Agreement applies, however, any Subscription will be priced separately and may also be subject to specific or additional terms and conditions (“**Subscription T&Cs**”) as outlined in the Elastycloud Management Panel.

- 3.2.2 Customer's placing of a Subscription in the Elastycloud Management Panel shall constitute Customer's signature for such Subscription. Customer warrants and represents that it shall give access to its Administrator Account on the Elastycloud Management Panel only to persons who are duly authorised to place or terminate Subscriptions. Customer further warrants and represents that Customer and its Merchants shall use the Services only for lawful purposes and in strict accordance with the Master Agreement and the Subscription T&Cs.
- 3.2.3 Any Subscription has itself an initial term and renewals as described in the Elastycloud Management Panel ("**Subscription Term**"). If not stated or agreed differently, the Subscription Term is for an indefinite period of time – that means until Customer decides to cancel the Subscription and does not use it anymore. Any Subscription Term ends automatically when the Master Agreement ends.

### **3.3. New features, changes**

- 3.3.1 Company may at its sole discretion release or implement new applications, features or functionality for the Services the use of which may be contingent upon Customer's agreement to additional terms.
- 3.3.2 Company may at its sole discretion make commercially reasonable changes to the Services or parts thereof from time to time, including the discontinuation of features or Services. Before implementing any substantial changes to features or the Services, Company will inform Customer in due time, by e-mail or through the Elastycloud Management Panel.

## **4. Resale of Services to Merchants, relationship, compliance**

- 4.1. To the extent that Customer is a reseller of Magento 2 services, Customer is entitled to resell the Services to its own customers who operate Magento 2 webshops (hereinafter the "**Merchants**"), however limited in scope to providing such Merchants (i) with Magento 2 hosting through Subscriptions signed by Customer in its own name in the Elastycloud Management Panel, and (ii) with access to Customer's own Account on the Elastycloud Management Panel in order for its Merchants to administer such Magento 2 hosting.
- 4.2. Customer shall manage the relationship with its Merchants; it is solely responsible for fulfilment of all contractual obligations related to its Administrator Account and the Accounts and Subscriptions connected thereto. Company shall not be obliged to provide Services directly to Merchants. Customer shall ensure that its Merchants at all times comply with this Master Agreement, the Subscription T&Cs as well as all other terms and conditions, agreements, Policies, data protection laws, etc. that apply to Customer's own use of Company's Services. Towards Company, any violation by Merchants is regarded as Customer's own violation.

## **5. Intellectual property, safety, backups, data protection**

### **5.1. Intellectual property**

- 5.1.1 Unless expressly agreed differently, Company does not own any title or interest in Customer's intellectual property. However, Customer hereby grants Company a non-exclusive, royalty-free, non-transferable, limited and revocable license for the purpose of performing the Services.
- 5.1.2 Company grants Customer a non-exclusive right to use the programs, applications, scripts and apps made available for the provision of the Services, limited in time to the respective Agreement Term. Except for rights expressly granted herein, this Master Agreement does not transfer any intellectual or other property or proprietary right to Customer. Customer agrees that all right, title, and interest in any product or service provided to Customer is Company's. These products and services are only for Customer's use in connection with the Services as outlined in this Master Agreement.
- 5.1.3 Customer expressly warrants to Company that Customer has the right to use any patented, copyrighted, or trademarked material which Customer uses, posts, or otherwise transfers to the systems or distributes through the systems operated by Company. This also includes that all software and other licenses required for operation of the content uploaded from its sphere are procured and maintained at all times. This includes in particular but is not limited any necessary Magento-licenses for the operation of content uploaded or distributed by Customer through the Elastycloud Management Panel.

## **5.2. Safety, back-ups, data protection**

- 5.2.1 Customer is responsible for the safety of all content that he uploads to or distributes through the Elastycloud Platform and shall generate necessary back-up copies of all such data. If data recovery on the systems of Company is necessary, Customer shall transmit the data sets in question free of charge to the Elastycloud Platform.
- 5.2.2 Customer is obliged to follow applicable data protection laws in its usage of the Services. Company follows data protection regulations as applicable in Sweden. Details are laid out in the applicable data protection policy

## **6. Suspension**

- 6.1. If Company becomes aware of any violation of this Master Agreement it may specifically request Customer to suspend any Account or Subscription related to such violation. If Customer fails to comply with Company's request within 72 hours, Company may itself implement the requested suspension and maintain the suspension until the violation has been cured.
- 6.2. Notwithstanding Section 6.1, Company may at any time at its discretion and without prior information to Customer suspend Customer's Administrator Account, Account and/or Subscriptions or parts thereof if and to the extent Company determines such suspension being appropriate to counteract an Emergency Security Issue. Company shall, however, inform Customer about such measure by e-mail as soon as reasonably possible.
- 6.3. Company may at its discretion suspend Customer's Administrator Account, Account and/or Subscriptions if Customer is in default with any payments until full payment of all outstanding fees has been effected.
- 6.4. Company may at its sole discretion suspend the provision of any Services at any time in order to comply with applicable law or orders issued by authorities.

## **7. Agreement Term, termination, expiration**

- 7.1. The Agreement Term of this Master Agreement shall be from the date of acceptance of the Master Agreement for an indefinite period of time.
- 7.2. Both Parties may terminate this Master Agreement with a notice period of 30 days with effect by the end of a calendar month.
- 7.3. Both Parties are entitled to declare the extraordinary termination of this Master Agreement if the other Party commits a material breach of this Master Agreement and despite the other Party's written reminder does not rectify such material breach within ten working days. Non-payment of invoices at the due date as well as violations of the Acceptable Use Policy shall in any case be deemed to constitute material breaches of this Master Agreement. In case of an extraordinary termination of the Master Agreement the current Agreement Term expires on the day following the termination notice.
- 7.4. Upon expiration of the Master Agreement, Customer is no longer entitled to access or use Company's Services and its access to the Elastycloud Management Panel will be terminated. Furthermore, Company is entitled to ensure that all Customer data and account settings, including but not limited to, website content, databases and e-mail messages are irrevocably deleted without any further notice.

## **8. Fees, Payment, taxes**

- 8.1. Company shall invoice Customer for its Services in accordance with the agreed pricing model. Fees not dependent on usage shall be payable in advance for the Subscription Term, provided no shorter accounting period is agreed. Fees dependent on usage shall be due at the end of the respective accounting period.
- 8.2. Fees dependent on usage shall be in accordance with the respective current price list defined by Company at its reasonable discretion. Company can change its prices at the beginning of the next Subscription Term on giving reasonable notice of at least one month. If Customer does not raise an objection to such change within a reasonable time limit defined by Company, the change shall be deemed approved. Company shall point out to Customer in the notification of change that the change shall take effect if

Customer does not raise an objection. Notwithstanding the afore, Company is entitled to adjust its prices annually with regard to the increase in the Swedish Consumer Price Index and the increase of prices paid to its suppliers for technical infrastructure.

- 8.3. All fees are billed in US-Dollar, unless expressly agreed differently with Customer. Agreed prices are net – that means without any value added taxes, fees, etc. All payments are due no later than 14 days after the issuance of the invoice and must be made by bank transfer or credit card, unless agreed differently. Overdue payments are subject to interest in according with the Swedish Interest Act (Sw. *Räntelagen*).
- 8.4. Any objections against invoiced fees must be substantiated and brought forward by Customer in writing no later than 14 days after Customer's receipt of the invoice. Objections may not be raised after that point in time. Customer can offset only undisputed or legally established counter-claims against amounts due to Company.

## 9. Unsubscribe/Opt-out.

- 9.1. Company shall be entitled to send to Customer transactional notices about its Administrator Account, Account, email newsletters and news of special promotions offered through Company and/or in conjunction with Companies partners.
- 9.2. To unsubscribe from Company newsletters and promotional mailings Customer must update its preferences the Administrator Account control panel or contact Company at [partner@elastycloud.com](mailto:partner@elastycloud.com). Customer may also unsubscribe through the links provided in promotional email messages sent by Company or on Companies behalf.

## 10. Advertisement

Customer is entitled to state publicly that he uses Elastycloud for its web shop and/or provision of its services and display the Elastycloud logo in compliance with the applicable brand guidelines during the Agreement Term. Company is entitled to state publicly that Customer is a user or reseller of Elastycloud and include Customer's logo in its online and offline promotional materials in accordance with Customer's applicable brand guidelines. Details of the cooperation or the other Party's business concept may only be mentioned with the prior consent of the other Party.

## 11. No Warranty

Company provides the Services strictly "as is". Company makes no warranties or representations of any kind, express or implied, for the Services. Company also disclaims any warranty of merchantability or fitness for a particular purpose and will not be responsible for any damages that may be suffered by Customer, including loss of data resulting from delays, non-deliveries, or service interruptions by any cause or due to your errors or omissions. Use of any information obtained from Company is to be used at Customer's own risk, and Company specifically denies any responsibility for the accuracy or quality of information obtained through the Services. Company expressly limits its damages for any non-accessibility time or other downtime to the Financial Credit listed in Company's applicable SLA. Company expressly limits its responsibility for any damages arising as a consequence of such unavailability.

## 12. Limitation of liability

- 12.1. Company shall be liable for damage only in the event of intent and gross negligence on the part of Company or one of its vicarious agents. This limitation shall not apply in the event of loss of life, personal injury or damage to health or to liability under product liability law.
- 12.2. Customer agrees that the liability limit of Company shall in no event be greater than the aggregate amount which Customer paid during the term of this Master Agreement (as renewed from time to time) during which the damage occurred; provided, however, the aggregate amount shall not exceed a total of four months fees for the Services.
- 12.3. Company, its officers, agents, or anyone else involved in providing the Services shall not be liable for any direct, indirect, incidental, special, or consequential damages that result from the use or inability to use the Services; or for any damages that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission, or any failure of performance, whether or not limited

to acts of God, communication failure, theft, destruction, or unauthorised access to Company's records, programs, or services.

### **13. Indemnification by Customer**

- 13.1. Customer agrees that Customer shall defend, indemnify, save, and hold Company harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys' fees, asserted against Company, its agents, servants, officers, and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by Customer, or Customer's agents, employees, or assigns.
- 13.2. Customer agrees to defend, indemnify, and hold harmless Company against liabilities arising out of:
- a) any injury to person or property caused by any products sold or otherwise distributed in connection with the Services;
  - b) any material supplied by Customer infringing or allegedly infringing on the property or proprietary rights of a third party;
  - c) copyright infringement;
  - d) any direct claims put forward by its Merchants against Company; and
  - e) any defective product which Customer sold or distributed by means of the Services.

### **14. Transfer of this Master Agreement**

Customer shall not be entitled to transfer this Agreement or any claims thereunder to any third party without the prior written consent of Company. Company shall be entitled to transfer this Master Agreement in its entirety to a related entity or to a third party that at the same time acquires all assets pertaining to the Elastycloud Platform.

### **15. Force Majeure**

- 15.1. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Master Agreement, for any failure or delay in fulfilling or performing any term of this Master Agreement (except for any obligations to make previously owed payments to the other Party hereunder) when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)") that frustrates the purpose of this Master Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Master Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labour stoppages or slowdowns or other industrial disturbances; (i) epidemic, pandemic or similar influenza or bacterial infection; (j) emergency state; (k) shortage of adequate medical supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the Impacted Party.
- 15.2. The Impacted Party shall provide the other Party with written notice of a Force Majeure Event within two (2) weeks after the Impacted Party, acting in good faith and using reasonable diligence, reasonably determines that a Force Majeure Event will impact its operations to the extent that its performance under this Master Agreement will be delayed or frustrated, including with such notice the Impacted Party's reasonable estimate of the duration of the Force Majeure Event and the expected time of performance by the Impacted Party, if any. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimised and shall resume its performance under the Agreement as soon as reasonably practicable after the removal of the cause of the Force Majeure Event.

### **16. Governing Law, Jurisdiction, Severability, Waiver**

- 16.1. Governing Law; Jurisdiction: This Master Agreement and the Parties' entire business relationship pertaining thereto shall be governed by and construed in accordance with the laws of Sweden without



regard to its conflicts of laws rules. The Parties agree to the exclusive jurisdiction of the courts of Malmö/Sweden. Company is at its discretion entitled to file suit against Customer at Customer's primary place of business.

- 16.2. Severability: In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Master Agreement, and this Master Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.
- 16.3. Waiver: No waiver by Company of any breach by Customer of any of the provisions of this Master Agreement shall be deemed a waiver of any preceding or succeeding breach of this Master Agreement. No such waiver shall be effective unless it is in writing and then only to the extent expressly set forth in such writing.

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