

**ELEMENTAL MACHINES  
TERMS AND CONDITIONS**

THESE ELEMENTAL MACHINES TERMS AND CONDITIONS (the “Terms”) are made effective as of the Effective Date set forth in any Order Form (as defined below) and is by and between Elemental Machines, Inc., a Delaware corporation with offices at 185 Alewife Brook Parkway, Suite 401, Cambridge, MA 02138 (“Elemental Machines”) and the entity listed as Customer in the Order Form (“Customer”). The Terms combined with all Order Forms are collectively referred to as the “Agreement” and govern the relationship between the parties with respect to any Devices or Services ordered in any Order Form. Each of Elemental Machines and Customer are referred to as a “Party” and collectively as the “Parties”. In consideration of the mutual covenants and conditions set forth below, Elemental Machines and Customer agree as follows:

**DEFINITIONS**

- 1.1 “Authorized Users” means employees or contractors of Customer who are authorized to access the Services using a user identifier and password provided to Customer by Elemental Machines or set-up by Customer.
- 1.2 “Devices” means the plug-and-play devices ordered by Customer and provided by Elemental Machines to monitor equipment and other conditions and gather data, as ordered in an Order Form.
- 1.3 “Intellectual Property Rights” means all forms of industrial and intellectual property rights and protections throughout the world, including any: (a) patents (including any patent applications, together with all reissues, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof); (b) copyrights; (c) Internet domain names, trademarks, service marks, and trade dress, together with all goodwill associated therewith; (d) trade secrets; (e) rights in databases and designs (ornamental or otherwise); (f) moral rights, rights of privacy, rights of publicity, and similar rights; and (g) any other proprietary rights and protections, whether currently existing or hereafter developed or acquired arising under statutory or common law, including all applications, disclosures, and registrations with respect thereto.
- 1.4 “Order Form” means an order form, whether in hardcopy or electronic format, executed by both Parties, that sets forth the Devices and Services ordered, the schedule of payments for the Products and Services (provided that certain products and Services may be free of charge), and any unique additional terms. Electronic Order Forms shall be deemed executed by Customer upon electronic submission and shall be deemed executed by Elemental Machines upon acceptance and approval. The Effective Date of an electronic Order Form shall be the date on which Elemental Machines creates an account for Customer or, if Customer already has an Elemental Machines account, the date of acceptance and approval of the Order Form by Elemental Machines.
- 1.5 “Services” means, collectively the services identified and purchased in any Order Form, including the Elemental Machines’ web-based dashboard and alert notification solution and related implementation services (if any).

**2. DEVICES**

- 2.1 Device Ordering and Lease. Subject to the terms and conditions of this Agreement, Elemental Machines hereby leases to Customer, and Customer hereby leases, the Devices, if any, identified in the applicable Order Form. Additional Devices may be leased by Customer by submitting to Elemental Machines an Order Form. No Order Form will be binding until executed by both Parties. Customer will only use the Devices in a careful and proper manner. Customer will, at Customer’s sole expense, keep and maintain the Devices clean and in good working order and repair during the Term. In the event any Device is lost or damaged, Customer will pay to Elemental Machines the replacement cost of the Devices. Customer’s use of the Devices are subject to the terms and conditions of the Agreement. Subject to the warranty, Customer is responsible for the repair or replacement of all Devices.
- 2.2 Delivery. Shipping terms are FOB Origin, Elemental Machines’ place of business. Risk of loss of the Devices will pass from Elemental Machines to Customer when Elemental Machines makes the Devices available to a shipping carrier selected by Elemental Machines or Customer (with the consent of the other party). Delivery will be deemed made upon transfer of possession to the carrier. Elemental Machines will have no obligation to deliver the Devices until the applicable fees have been paid.
- 2.3 Restrictions. Customer may use the Devices only in conjunction with the Services, for Customer’s internal use and their intended purposes. Devices are also subject to the restrictions set forth in Sections 3.2 and 3.4.
- 2.4 Destruction; Return. Upon Elemental Machines’ request and upon any termination or expiration of this Agreement, Customer will: (a) promptly return to Elemental Machines or, if so directed by Elemental Machines, destroy all tangible embodiments of the Device (in every form and medium), and (b) certify (by a Customer officer) to Elemental Machines in writing that Customer has fully complied with the foregoing obligations.

**3. SERVICES**

- 3.1 Services. Subject to the terms and conditions of this Agreement, Elemental Machines will provide the Services ordered pursuant to any Order Form.
- 3.2 Restrictions. The rights set forth in Section 2.1 are granted subject to the following restrictions:
- (a) the Services will be used or accessed only by Authorized Users and only for Customer’s internal use; and
  - (b) Customer will not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Devices or Services available to any third party, other than as expressly permitted by this Agreement; (ii) create derivative works based on the Services or Devices; (iii) interfere with or disrupt the integrity or performance of the Services or Devices; (iv) reverse engineer or attempt to gain unauthorized access to the Devices, Services or its related systems or networks; or (v) use the Devices or Services to store or transmit infringing, libelous, or otherwise unlawful content or material, or to store or transmit content or material in violation of any rights of any third party.
- 3.3 Authorized Users. Customer will safeguard, and ensure that all Authorized Users safeguard any user names and passwords. Customer will be responsible for all acts and omissions of Authorized Users or any users that access the Services using authorized user names and passwords. Customer

will notify Elemental Machines immediately if it learns of any unauthorized use of any user names or passwords or any other known or suspected breach of security.

**3.4 Reservation of Rights.** As between Customer and Elemental Machines, all title and Intellectual Property Rights in and to the Devices and Services are owned exclusively by Elemental Machines. Customer is a subscriber to the Service; the Service is not sold to Customer. No title to or ownership of the Devices or Services, or any proprietary rights related to the Services, is transferred under or by virtue of the Agreement. Elemental Machines reserves all rights in and to the Devices and Services not expressly granted to Customer under the Agreement. Further, the Agreement does not authorize Customer to use any name, trademark or logo of Elemental Machines. The Devices and Services are protected by Intellectual Property laws and treaties related to Intellectual Property Rights.

**3.5 Feedback.** Customer hereby grants to Elemental Machines a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use and incorporate into the Devices and Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Authorized Users, relating to the Devices and Services.

#### **4. DATA**

**4.1 Ownership.** For purposes of this Agreement, "Data" will mean all Customer data, information and materials (a) collected by the Devices transmitted to Elemental Machines; (b) collected by third party devices and transmitted to Elemental Machines; or (c) provided by Customer to Elemental Machines through the Services. As between the parties, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Data. Customer hereby grants to Elemental machines a limited, perpetual, royalty-free, worldwide license, to use, copy, display, disclose, modify and distribute the Data solely for the purpose of providing the Services (including improving the Services) and for the creation of compilations of aggregated data and/or statistics; provided, however, in any such aggregated data or statistics, Elemental Machines will ensure that the Data is used in aggregated form only and in a manner that is not directly attributable to or identified with Customer.

#### **5. FEES**

**5.1 Fees.** Customer will pay to Elemental Machines the price for the Devices and Services as set forth in and on the schedule contained in the applicable Order Form as applicable; provided, however, that as indicated on the applicable Order Form or invoice, Customer may pay the price less a 2% discount if Customer pays within ten (10) days of such invoice.

**5.2 Payment Terms.** Fees are due and payable within thirty (30) days of Customer's receipt of the applicable invoice, but Customer may pay sooner for a discount in accordance with Section 5.1 above. Any amounts not paid when due shall accrue interest at the lesser of one- and one-half percent (1.5%) per month (19.57% annually) or the maximum rate allowed by law. Elemental Machines reserves the right to use any means of collection available under applicable law to collect any amount past due. All amounts payable by Customer to Elemental Machines hereunder are exclusive of any sales, use and other taxes or duties, however designated (collectively "**Taxes**"). Customer will be solely responsible for payment of any Taxes, except for those taxes based on the income of Elemental Machines. Customer will not withhold any Taxes from any amounts due Elemental Machines.

#### **6. TERM, TERMINATION**

**6.1 Initial Term.** Unless sooner terminated in accordance with the terms of this Section 6, this Agreement will become effective on the Effective Date and continue for the period of time set forth in the applicable Order Form (the "**Initial Term**").

**6.2 Renewal Terms.** Following the Initial Term and except as earlier terminated as described below, this Agreement will automatically renew for successive one (1) year renewal terms (each, a "**Renewal Term**"), unless either Party provides notice to the other of its intention to allow the Agreement to expire at least thirty (30) days prior to expiration of the then-current term. The Initial Term and all Renewal Terms will collectively be referred to as the "**Term**".

**6.3 Termination.** Each Party may terminate this Agreement upon written notice to the other Party in the event the other Party commits any material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach. Elemental Machines may terminate this Agreement with respect to any products or Services that it provides free of charge for any reason or no reason at any time upon 90 days' notice to Customer.

**6.4 Obligations on Termination.** Upon expiration or termination of this Agreement all rights granted hereunder by Elemental Machines and all obligations of Elemental Machines to provide Services will immediately terminate. Upon the termination of this Agreement for any reason, each party will be released from all obligations to the other arising after the date of expiration or termination, except that provisions which by their nature should survive termination will survive, such as restrictions, indemnity obligations, warranty disclaimers, and limitations of liability, including Sections 0, 2.3, 2.4, 3.2, 3.4, 3.5, 4.1, 6.3, 7, 8.3, 8.4, 8.5, 9, 10, and 11. All fees for the Devices and Services are nonrefundable. Without limiting the foregoing, no refunds or credits will be issued for partial periods of service, downgrade refunds or refunds for period unused in the event of termination under this Agreement.

#### **7. CONFIDENTIALITY**

**7.1 Definition.** As used herein, subject to Section 7.2 below, "**Confidential Information**" means any and all information or data, regardless of whether it is in tangible form, disclosed by either Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the Receiving Party; provided, however, that in any event Elemental Machines' Confidential Information will include all information relating to the Services, and Customer's Confidential Information will include the Data (subject, however, to Elemental Machines' rights to use and disclose the Data as set forth in Section 4). In addition, the terms of this Agreement will be considered the Confidential Information of both Parties.

**7.2 Exclusions.** Notwithstanding the foregoing, information and data will not be deemed "Confidential Information" if such information: (i) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (iv) is independently developed by the Receiving Party without use of or reference to the Confidential Information.

**7.3 Obligations.** The Parties will use reasonable measures to protect the secrecy of, avoid disclosure and unauthorized use or reproduction of the other Party's Confidential Information. Without restricting or otherwise limiting the exercise by a Party of the rights and licenses expressly granted to it under this Agreement, Confidential Information may be disclosed to only (a) such employees and agents of the Parties as may have a need to know such information in the course of

their duties; (b) legal or financial advisors of the Parties on a need to know basis; or (c) existing and potential investors, lenders, acquirers, partners and their respective legal or financial advisors; provided in each case that the foregoing are bound by a written agreement (or in the case of advisors, ethical duties) respecting such Confidential Information in accordance with the terms of this Section 7. In addition, Confidential Information may be disclosed to any competent authorities following a judicial order to do so.

## 8. REPRESENTATIONS, WARRANTIES AND EXCLUSIONS

8.1 General. Each Party represents and warrants to the other Party that such Party has the required rights, power and authority to enter into this Agreement and to grant all rights, authority and licenses granted hereunder. Elemental Machines represents and warrants to Customer that Elemental Machines will provide the implementation services, if applicable, in a professional and workmanlike manner.

8.2 Device Warranty. Elemental Machines warrants to Customer that, during the Term, such Device will be free from material defects and will substantially conform to applicable documentation. The foregoing warranties do not cover damage to the Devices (or any part thereof) due to problems caused by (a) Customer's negligence, abuse or misapplication, (b) other external causes (including, without limitation, third party hardware or software, accident, abuse, misuse, problems with electrical power, servicing or modifications not authorized by Company), or (c) usage not in accordance with Elemental Machine's documentation (collectively, "Warranty Exclusions"). Customer's sole and exclusive remedy, and Elemental Machines' sole and exclusive obligation, for breach of the foregoing warranties, is to require Elemental Machines, at Elemental Machines' option, to repair or replace the Device. For any breaches of the foregoing warranties, Elemental Machines shall pay all costs (including shipping costs) associated with: (y) the return of Devices back to Elemental Machines and (z) the shipment of the repaired or replaced Devices to Customer. If a Device is damaged due to a Warranty Exclusion, Customer shall be responsible for the repair or replacement of the Device (including all shipping costs).

8.3 Third Party Hardware. The Gateway, and all other third party hardware, software, equipment, devices identified in the Order Form ("Third Party Hardware") are provided on an as-is, pass-through basis. All warranties, indemnification and support obligations with respect to any Third Party Hardware is provided by the applicable third party licensor or supplier. Elemental Machines does not provide any warranty, indemnification or support with respect to any Third Party Hardware.

8.4 Batteries. Certain Devices require batteries for operation. Customer is responsible for regular testing and replacement of the batteries used for the Devices. ELEMENTAL MACHINES DOES NOT PROVIDE ANY WARRANTY OF ANY KIND AND ELEMENTAL MACHINES DISCLAIMS ANY AND ALL WARRANTIES RELATING TO ANY BATTERIES USED IN THE DEVICES.

8.5 Exclusions. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE DEVICES AND SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND ELEMENTAL MACHINES DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, SAFETY, SECURITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT ELEMENTAL MACHINES DOES NOT WARRANT THAT THE SERVICES WILL BE PROVIDED IN AN UNINTERRUPTED OR ERROR FREE FASHION AT ALL TIMES, THAT THE SERVICES ARE SECURE, THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE SERVICES WILL YIELD ANY PARTICULAR RESULT. THE SERVICES AND DEVICES ARE NOT INTENDED FOR SAFETY FUNCTIONS AND ELEMENTAL MACHINES DISCLAIMS ALL LIABILITY RELATED TO SUCH USE. CUSTOMER AGREES THAT ELEMENTAL MACHINES WILL HAVE NO LIABILITY TO CUSTOMER WITH RESPECT TO THE DATA OR CUSTOMER'S USE THEREOF. ELEMENTAL MACHINES MAKES NO WARRANTY OR REPRESENTATION REGARDING THE ACCURACY OR COMPLETENESS OF ANY DATA. FURTHER, CUSTOMER AGREES THAT ELEMENTAL MACHINES WILL HAVE NO LIABILITY FOR ANY ACTIONS OR INACTIONS OF CUSTOMER, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO ANY ACTIONS TAKEN OR OMITTED TO BE TAKEN BY CUSTOMER IN RESPONSE TO OR AS A CONSEQUENCE OF THE DATA OR ANY SERVICES. WITHOUT LIMITING THE FOREGOING, ELEMENTAL MACHINES WILL HAVE NO LIABILITY FOR ANY DAMAGES RESULTING FROM THE FAILURE OF THE DEVICES OR SERVICES TO PERFORM, INCLUDING ALARM FAILURE, DAMAGE TO PERISHABLES, INSTRUMENTS, MACHINES COMPUTERS, NETWORKS, MATERIALS, RESEARCH DATA OR OTHER ITEMS DAMAGED OR LOST DUE TO THE FAILURE OF EQUIPMENT (E.G., REFRIGERATORS, HVAC) PERFORMANCE OR THE OCCURRENCE OF UNDESIRE ENVIRONMENTAL FACTORS.

## 9. INDEMNIFICATION

9.1 Indemnification by Elemental Machines. Elemental Machines will defend at its expense any claim, suit or proceeding (each a "Claim") brought against Customer by a third party based upon a claim that Customer's use of the Services or Devices as contemplated by this Agreement infringes such third party's rights under any United States patent or copyright, and Elemental Machines will pay all damages finally awarded against Customer by a court of competent jurisdiction as a result of any such Claim. If the use of any Device or any portion of the Services by Customer has become, or in Elemental Machines' opinion is likely to become, the subject of any claim of infringement, Elemental Machines may at its option and expense (a) procure for Customer the right to continue using such Device or portion of the Services as set forth hereunder; (b) replace or modify such Device or portion of the Services to make it non-infringing so long as it retains at least equivalent functionality; or (c) if options (a) or (b) are not reasonably practicable, terminate this Agreement and provide a pro-rata refund of any amounts pre-paid. Elemental Machines will have no liability or obligation under this Section 9.1 with respect to any Claim to the extent caused by (w) use of the Services outside the scope of this Agreement; (x) compliance with or use of designs, data, instructions or specifications provided by Customer (including the Data); (y) modification of the Device or Services by any person or entity other than Elemental Machines without Elemental Machines' express consent; or (z) the combination, operation or use of the Device or Services with other applications, portions of applications, product(s), devices, equipment, hardware, software, data or services.

9.2 Indemnification by Customer. Customer will defend at its expense any Claim brought against Elemental Machines by any third party arising from (a) any content provided by Customer through the Services; (b) anything covered by any of clauses (w) through (z) of Section 9.1, or (c) use of the Services or Data by Customer or Authorized Users, or by any entity or individual using the user identifier and password provided to Customer by Elemental Machines, and Customer will pay all damages finally awarded against Elemental Machines by a court of competent jurisdiction as a result of any such Claim. Customer will have no liability or obligation under this Section 9.2 with respect to any Claim to the extent caused by Elemental Machines' gross negligence or willful misconduct or to the extent Elemental Machines would be required to indemnify Customer with respect to such Claim under Section 9.1 if such Claim had been brought against Customer.

9.3 Additional Terms. The foregoing indemnification obligations are conditioned upon the following: (a) the Party seeking indemnification will promptly notify the indemnifying Party of the applicable Claim, (b) the indemnifying Party will have the sole and exclusive authority to defend and/or settle any such Claim and (c) the Party seeking indemnification will reasonably cooperate with the indemnifying Party in connection therewith.

## 10. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL ELEMENTAL MACHINES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FIRE OR WATER DAMAGE, LOST DATA, OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF A REPRESENTATIVE OF SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. ELEMENTAL MACHINES WILL NOT BE LIABLE UNDER THIS AGREEMENT FOR ANY DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRECEDING THE TIME OF ANY CLAIM.

## 11. GENERAL

11.1 Force Majeure. Elemental Machines will not be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control, including, without limitation, earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially declared) or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree; provided that financial inability in and of itself will not be a force majeure event.

11.2 Compliance with Laws. Without limiting the generality of the foregoing, Customer will not transfer, either directly or indirectly, the Services or any Device, either in whole or in part, to any destination subject to export restrictions under United States law, unless prior written authorization is obtained from the appropriate United States agency and will otherwise comply with all other applicable import and export laws, rules and regulations.

11.3 No Assignment. Customer may not assign this Agreement, or sublicense any of the rights granted herein, in whole or in part, without the prior written consent of Elemental Machines, which consent will not be unreasonably withheld, except Customer may assign this Agreement, without the prior written consent of Elemental Machines, to a corporation or other business entity succeeding to all or substantially all of the assets and business of Customer by merger or purchase, provided that such corporation or other business entity assumes, in a writing delivered to Elemental Machines, all of the terms and conditions of this Agreement. Any attempt by Customer to assign or transfer any of the rights, duties or obligations of this Agreement in violation of the foregoing will be null and void. Elemental Machines may freely assign or subcontract any or all of its rights or obligations under this Agreement.

11.4 Amendment; Waiver. This Agreement may not be amended or modified, in whole or part, except by a writing signed by duly authorized representative of both Parties. No provision or part of this Agreement or remedy hereunder may be waived except by a writing signed by a duly authorized representative of the Party making the waiver. Failure or delay by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

11.5 Relationship. Nothing in this Agreement will be construed to place the Parties in an agency, employment, franchise, joint venture, or partnership relationship. Neither Party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.

11.6 Severability. In the event that any provision of this Agreement is found to be unenforceable, such provision will be reformed only to the extent necessary to make it enforceable, and such provision as so reformed will continue in effect, to the extent consistent with the intent of the parties as of the Effective Date.

11.7 Governing Law, Jurisdiction. All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its rules of conflict of laws. Each of the Parties hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts (the "Massachusetts Courts") for any litigation among the Parties arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, waives any objection to the laying of venue of any such litigation in the Massachusetts Courts and agrees not to plead or claim in any Massachusetts Court that such litigation brought therein has been brought in any inconvenient forum or that there are indispensable parties to such litigation that are not subject to the jurisdiction of the Massachusetts Courts.

11.8 Notices. All notices under or related to this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when: (a) delivered personally; (b) sent by confirmed telecopy or other electronic means; (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth on the Cover Page, or such other addresses designated pursuant to this Section 11.8.

11.9 Entire Agreement. This Agreement constitutes the entire agreement between the Parties. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations.

11.10 Export Control Laws. The Devices and Services are subject to export controls under the laws and regulations of the United States and any other applicable countries' laws and regulations. Customer agrees to comply with such laws and regulations governing export, re-export, transfer, and use of the Services, and Customer will obtain all required U.S. and local authorizations, permits, or licenses. Customer represents and warrants that (a) Customer is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) Customer is not listed on any U.S. Government list of prohibited or restricted parties.

11.11 U.S. Federal Government End User. Elemental Machines provides the Services, including related software and technology, for federal government end use as 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 those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Services is provided to the end user with only those rights as provided under the terms and conditions of this Agreement. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Elemental Machines to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**APPENDIX A**

**SERVICE LEVEL AGREEMENT (SLA) FOR THE  
ELEMENTAL MACHINES INSIGHTS ALERTING & MONITORING APPLICATION**

1. System Uptime:
  - Elemental Machines shall use commercially reasonable efforts to provide a system uptime of 99% per year, aggregated across all available services. The list of available services monitored is available to view at <https://status.elementalmachines.io/>.
  - System uptime will exclude the following items:
    - Scheduled maintenance or updates/new versions to the platform.
    - Security updates.
    - Services performed at the direction of the client and issues resulting from the client's actions.
    - Security incidents and uptime issues due to third-party service providers (e.g GCP or AWS).
  
2. Notifications for Software and Hardware updates will be sent to customers impacted by changes:
  - Elemental Machines will provide regular, scheduled maintenance windows to minimize disruptions and enable better preparations.
  - 14 day advanced notice will also be given for major version changes to the platform.
  - 48 hour advance notice for regular releases or maintenance.
  - Post-update notifications for cases where minor updates or patches were required for urgent security or bug fixes.
  
3. Support Response Rates:
  - Elemental Machines commits to responding to support tickets and service inquiries within the applicable time frames listed in Tables 1 & 2.
  - Elemental Machines does not guarantee that any issues or problems will be resolved or that any component of the platform will be error-free.
  - Elemental Machines has real time 24/7 infrastructure monitoring for all critical systems and will proactively respond based on the severity of the incident.
  - EM has 24/7 access to our ticket submission system which will be reviewed during regular business hours of 7am - 7pm EST, Monday through Friday.

Table 1 – Software Issues Response Times		
Severity	Description	Response Time
Critical	The platform is down and cannot be accessed	6 Business Hours
High	There is a defect in the platform and there is no workaround	12 Business Hours
Medium	There is a defect in the platform but there is a workaround	24 Business Hours / 2 Business Days
Low	The platform is running but there are minor cosmetic defects	5 Business Days

Table 2 – Device Issue Response Times		
Severity	Description	Response Time
Critical	All devices are not sending data either at a single customer or multiple customers OR All devices of the same type are not sending data	6 Business Hours
High	A subset of devices is not sending data or a subset of gateway features is not working or is running in a degraded fashion	12 Business Hours
Medium	Individual gateway issues - a subset of devices at one or more customers is not sending data, so that some but not all elements at that customer are impacted or there is a loss of redundancy	24 Business Hours / 2 Business Days
Low	Individual device issues	5 Business Days

- Contact information: support tickets can be submitted by emailing [help@elementalmachines.com](mailto:help@elementalmachines.com) or visiting the support page at <https://elementalmachines.freshdesk.com/support/home>.

#### 4. Escalation Handling:

- The active involvement and availability of the customer may be required. Particularly in the case of connectivity issues and specific workflows, knowledgeable customer support contacts are required.
- At Elemental Machines, our commitment to efficient issue resolution and transparent communication with our customers is paramount. Our streamlined escalation process includes the following steps:
  1. Elemental Machines to provide updates on Critical and High issues at a minimum of the associated response time frequency.
  2. Elemental Machines will use commercially reasonable efforts to achieve resolution of escalated issues; which in some cases may mean delaying the resolution until a future bug release.

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