

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

GENERAL TERMS AND CONDITIONS FOR ELEMENT DATA DECISION CLOUD™ (“GTC”)

1. DEFINITIONS

Capitalized terms used in this document are defined in the Glossary.

2. USAGE RIGHTS AND RESTRICTIONS

2.1 Grant of Rights.

Conditioned upon Customer’s and its Authorized Users’ compliance with the terms of this Agreement, Element Data, Inc. grants to Customer a non-exclusive, non-transferable and world-wide right to use the Decision Cloud™ (including its implementation and configuration), Cloud Materials and Documentation solely for Customer’s and its Affiliates’ internal business operations. Permitted uses and restrictions of the Decision Cloud also apply to Cloud Materials and Documentation.

2.2 Authorized Users.

Customer may permit Authorized Users to use the Decision Cloud. Usage is limited to the Usage Metrics and volumes stated in the Order Form. Access credentials for the Decision Cloud may not be used by more than one individual, but may be transferred from one Authorized User to another if the original user is no longer permitted to use the Decision Cloud. Customer is solely responsible for all acts or omissions, including breaches of the Agreement, caused by Authorized Users.

2.3 Acceptable Use Policy.

With respect to the Decision Cloud, Customer will not:

- (a) disassemble, decompile, reverse-engineer, copy, translate or make derivative works,
- (b) transmit any content or data that is unlawful or infringes any intellectual property rights, or
- (c) circumvent or endanger its operation or security.

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

2.4 Verification of Use.

Customer will monitor its own use of the Decision Cloud and report any use in excess of the Usage Metrics and volume. Element Data may monitor use to verify compliance with Usage Metrics, volume and the Agreement.

2.5 Suspension of Decision Cloud.

Element Data may suspend Customer's or any Authorized Users' use of the Decision Cloud if continued use may result in material harm to Decision Cloud or its users. Element Data will promptly notify Customer of the suspension. Element Data will limit the suspension in time and scope as reasonably possible under the circumstances.

2.6 Third Party Web Services.

The Decision Cloud may include integrations with web services made available by third parties (other than Element Data or its Affiliates) that are accessed through the Decision Cloud and subject to terms and conditions with those third parties. These third party web services are not part of the Decision Cloud and the Agreement does not apply to them.

2.7 Mobile Access to Decision Cloud.

Authorized Users may access certain Decision Cloud services through mobile applications obtained from third-party websites such as the Android or Apple app stores. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.

3. ELEMENT DATA RESPONSIBILITIES

3.1 Provisioning.

Element Data provides access to the Decision Cloud as described in the Agreement.

3.2 Support.

Element Data provides support for the Decision Cloud as referenced in the Order Form.

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

3.3 Security.

Element Data uses commercially reasonable security technologies in providing the Decision Cloud. To the extent Customer uploads personal data to Decision Cloud, Element Data will comply with applicable US data privacy law with respect to the processing of such data.

3.4 Modifications.

- (a) The Decision Cloud services and Element Data Policies may be modified at any time by Element Data. Element Data will inform Customer of material modifications by email, the support portal, release notes, Documentation or the Decision Cloud services. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Decision Cloud, which Customer may use subject to the then-current Supplement and Documentation.
- (b) If Customer establishes that a modification materially reduces the features or functionality of Decision Cloud such that Customer is unable to make productive use of Decision Cloud or doing so would add significant burden on Customer, Customer may provide prompt written notice of such a claim to Element Data within thirty days after the introduction of the new feature or functionality, and if Element Data is unable to resolve Customer's claim within 30 days of receiving notice, Customer may terminate its subscriptions to the affected Decision Cloud service offering by providing written notice of such termination to Element Data.

3.5 Analyses.

Without limiting the rights and licenses granted in Section 4.1, Element Data or its Affiliates may create analyses utilizing, in part, Customer Data and information derived from Customer's use of the Decision Cloud and Consulting Services. Customer grants to Element Data a worldwide, non-exclusive, royalty-free license to Customer Data to aggregate or compile such Customer Data as described herein. Analyses will anonymize and aggregate information, and will be treated as Cloud Materials. Examples of how analyses may be used include: optimizing resources and support; research and development; automated processes that enable continuous

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

improvement, performance optimization and development of new Element Data products and services; verification of security and data integrity; internal demand planning; and data products such as industry trends and developments, indices and anonymous benchmarking.

4. CUSTOMER AND PERSONAL DATA

4.1 Customer Data.

Customer is solely responsible for the Customer Data and for entering it into the Decision Cloud™ unless otherwise specified in the Order Form. Customer grants to Element Data (including its Affiliates and subcontractors) a nonexclusive right and license to process Customer Data solely to provide and support the Decision Cloud and provide services to Customer.

4.2 Personal Data.

Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.

4.3 Security.

Customer will maintain reasonable security standards for its Authorized Users' use of the Decision Cloud.

4.4 Access to Customer Data.

- (a) During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case Element Data and Customer will find a reasonable method to allow Customer access to Customer Data.
- (b) Before the Subscription Term expires, Customer may use Element Data's self-service export tools (as available) to perform a final export of Customer Data from the Decision Cloud.
- (c) At the end of the Agreement, Element Data will delete the Customer Data remaining on servers hosting the Decision Cloud

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.

- (d) In the event of third party legal proceedings relating to the Customer Data, Element Data will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

5. FEES AND TAXES

5.1 Fees and Payment.

Customer will pay fees as stated in the Order Form. After prior written notice, Element Data may suspend Customer's use of the Decision Cloud until payment is made. Customer cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable and fees non-refundable.

5.2 Taxes.

Fees and other charges imposed under an Order Form will not include taxes. Customer is responsible for all taxes, other than Element Data's income and payroll taxes. Customer must provide to Element Data any direct pay permits or valid tax-exempt certificates prior to signing an Order Form. If Element Data is required to pay taxes (other than its income and payroll taxes), Customer will reimburse Element Data for those amounts and indemnify Element Data for any taxes and related costs paid or payable by Element Data attributable to those taxes.

6. TERM AND TERMINATION

6.1 Term.

The Subscription Term is as stated in the Order Form.

6.2 Termination.

A party may terminate the Agreement:

- (a) upon thirty days written notice of the other party's material breach unless the breach is cured during that thirty day period,

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

- (b) as permitted under Sections 3.4(b), 7.3(b), or 8.1(c) (with termination effective thirty days after receipt of notice in each of these cases), or
- (c) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 12.6.

6.3 Refund and Payments.

For termination by Customer or an 8.1(c) termination, Customer will be entitled to:

- (a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination, and
- (b) a release from the obligation to pay fees due for periods after the effective date of termination.

6.4 Effect of Expiration or Termination.

Upon the effective date of expiration or termination of the Agreement:

- (a) Customer's right to use the Decision Cloud and all Element Data Confidential Information will end,
- (b) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement, and
- (c) termination or expiration of the Agreement does not affect other agreements between the parties.

6.5 Survival.

Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, and 12 will survive the expiration or termination of the Agreement.

7. WARRANTIES

7.1 Compliance with Law.

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- (a) in the case of Element Data, the operation of Element Data's business as it relates to the Decision Cloud, and
- (b) in the case of Customer, the Customer Data and Customer's use of the Decision Cloud.

7.2 Good Industry Practices.

Element Data warrants that it will:

- (a) provide the Decision Cloud in substantial conformance with the Documentation; and
- (b) provide Consulting Services with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Consulting Services provided.

7.3 Remedy.

Customer's sole and exclusive remedies and Element Data's entire liability for breach of the warranty under Section 7.2 will be:

- (a) the re-performance of the deficient services, and
- (b) if Element Data fails to re-perform, Customer may terminate its subscription for the affected service. Any termination must occur within three months of Element Data's failure to re-perform.

7.4 System Availability.

- (a) Element Data warrants to maintain an average monthly system availability for the production system of the Decision Cloud as defined in the applicable service level agreement or Supplement ("SLA").
- (b) Customer's sole and exclusive remedy for Element Data's breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow Element Data's posted credit claim procedure. When the validity of the service credit is confirmed by

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

Element Data in writing (email permitted), Customer may apply the credit to a future invoice for the Decision Cloud or request a refund for the amount of the credit if no future invoice is due.

7.5 Warranty Exclusions.

The warranties in Sections 7.2 and 7.4 will not apply if:

- (a) the Decision Cloud is not used in accordance with the Agreement or Documentation,
- (b) any non-conformity is caused by Customer, or by any product or service not provided by Element Data, or
- (c) the Decision Cloud or Consulting Services were provided for no fee.

7.6 Disclaimer.

Except as expressly provided in the Agreement, neither Element Data nor its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of Element Data or product roadmaps in obtaining subscriptions for Decision Cloud or any related service.

8. THIRD PARTY CLAIMS

8.1 Claims Brought Against Customer.

- (a) Element Data will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Decision Cloud infringes or misappropriates a patent claim, copyright, or trade secret right. Element Data will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement Element Data enters into) with respect to these claims.

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

(b) Element Data's obligations under Section 8.1 will not apply if the claim results from (i) Customer's breach of Section 2, (ii) use of the Decision Cloud in conjunction with any product or service not provided by Element Data, or (iii) use of the Decision Cloud provided for no fee.

(c) In the event a claim is made or likely to be made, Element Data may, in its sole discretion, (i) procure for Customer the right to continue using the Decision Cloud under the terms of the Agreement, or (ii) replace or modify the Decision Cloud to be non-infringing without a material decrease in functionality. If these options are not reasonably available, Element Data or Customer may terminate Customer's subscription to the affected Decision Cloud upon written notice to the other.

8.2 Claims Brought Against Element Data

Customer will defend Element Data against claims brought against Element Data or its Affiliates and subcontractors by any third party related to Customer Data, Customer's use of the Decision Cloud, and the acts or omissions of Customer's Authorized Users. Customer will indemnify Element Data against all damages finally awarded against Element Data or its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

8.3 Third Party Claim Procedure.

(a) The party against whom a third party claim is brought will timely notify the other party in writing of any claim, reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the party providing the defense.

(b) The party that is obligated to defend a claim will have the right to fully control the defense.

(c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

8.4 Exclusive Remedy.

The provisions of Section 8.1 state the sole, exclusive, and entire liability of Element Data, its Affiliates, and subcontractors to Customer, and is Customer's sole remedy, with respect to third party claims and to the infringement or misappropriation of third party intellectual property rights.

9. LIMITATION OF LIABILITY

9.1 Unlimited Liability.

Neither party will exclude or limit its liability for damages resulting from:

- (a) the parties' obligations under Section 8.1(a) and 8.2,
- (b) unauthorized use or disclosure of Confidential Information,
- (c) either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,
- (d) death or bodily injury arising from either party's gross negligence or willful misconduct, or
- (e) any failure by Customer to pay any fees due under the Agreement.

9.2 Liability Cap.

Subject to Sections 9.1 and 9.3, the maximum aggregate liability of either party (or its respective Affiliates or Element Data's subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve month period will not exceed the fees paid to Element Data for the applicable services directly causing the damage during the twelve month period preceding the claim.

9.3 Exclusion of Damages.

Subject to Section 9.1:

- (a) neither party (nor its respective Affiliates or Element Data's subcontractors) will be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good will or

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

business profits, work stoppage or for exemplary or punitive damages, and

(b) Element Data will not be liable for any damages caused by any service provided for no fee.

9.4 Risk Allocation.

The Agreement allocates the risks between Element Data and Customer. The fees for the Decision Cloud and Consulting Services reflect this allocation of risk and limitations of liability.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Element Data Ownership.

Element Data, its Affiliates and their respective licensors own all intellectual property rights in and related to the Decision Cloud, Cloud Materials, Documentation, Consulting Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Customer are reserved to Element Data, its Affiliates and their respective licensors.

10.2 Customer Ownership.

Notwithstanding the licenses granted to Element Data in the Agreement, as between Element Data and Customer, Customer exclusively owns all rights, title, and interest in and to all Customer Data.

10.3 Non-Assertion of Rights.

Customer covenants, on behalf of itself and its Affiliates, successors and assigns, not to assert against Element Data, its Affiliates or their respective licensors, any rights, or any claims of any rights, in Decision Cloud, Cloud Materials, Documentation, or Consulting Services.

11. CONFIDENTIALITY

11.1 Use of Confidential Information.

(a) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section 11. Customer will not disclose the Agreement or the pricing to any third party.

- (b) Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section 11.
- (c) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

11.2 Exceptions.

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

- (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information,
- (b) is generally available to the public without breach of the Agreement by the receiving party,
- (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or
- (d) the disclosing party agrees in writing is free of confidentiality restrictions.

11.3 Publicity.

Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that Element Data may use Customer's name in customer listings or

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

quarterly calls and emails with its investors or, at times mutually agreeable to the parties, as part of Element Data's marketing efforts (including reference calls and stories, press testimonials, site visits, Element Data participation). Customer agrees that Element Data may share information on Customer with its Affiliates and service providers for marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with Element Data.

11.4 Feedback.

If Customer elects to provide any suggestions, comments, improvements, ideas or other feedback relating to the Element Data services, including Decision Cloud, to Element Data (collectively, "**Feedback**"), Customer acknowledges and agrees that Element Data may incorporate into the Element Data services any such Feedback without any obligation, payment, or restriction based on intellectual property rights or otherwise, excluding any Customer Confidential Information contained in the Feedback.

12. MISCELLANEOUS

12.1 Severability.

If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

12.2 No Waiver.

A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

12.3 Electronic Signature.

Electronic signatures that comply with applicable law are deemed original signatures.

12.4 Regulatory Matters.

Element Data Confidential Information is subject to export control laws of various countries, including the laws of the United States and Germany. Customer will not submit Element Data Confidential Information to any

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

government agency for licensing consideration or other regulatory approval, and will not export Element Data Confidential Information to countries, persons or entities if prohibited by export laws.

12.5 Notices.

All notices will be in writing and given when delivered to the address set forth in an Order Form with copy to the legal department. Notices by Element Data relating to the operation or support of the Decision Cloud and those under Sections 3.4 and 5.1 may be in the form of an electronic notice to Customer's authorized representative or administrator identified in the Order Form.

12.6 Assignment.

Without Element Data's prior written consent, Customer may not assign or transfer the Agreement (or any of its rights or obligations) to any party. Element Data may assign the Agreement to Element Data or any of its Affiliates.

12.7 Subcontracting.

Element Data may subcontract parts of the Decision Cloud or Consulting Services to third parties. Element Data is responsible for breaches of the Agreement caused by its subcontractors.

12.8 Relationship of the Parties.

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

12.9 Force Majeure.

Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

12.10 Governing Law.

The Agreement and any claims relating to its subject matter will be

General Terms and Conditions for ELEMENT DATA INC. Decision Cloud™ (Direct) enUS.v.2-2017 Page 14

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

governed by and construed under the laws of Washington, without reference to its conflicts of law principles. All disputes will be subject to the exclusive jurisdiction of the courts located in Seattle, Washington. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement. Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.11 Entire Agreement.

The Agreement constitutes the complete and exclusive statement of the agreement between Element Data and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 3.4. An Agreement will prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if Element Data accepts or does not otherwise reject the purchase order.

Glossary

- 1.1 "Affiliate"** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
- 1.2 "Agreement"** means an Order Form and documents incorporated into an Order Form.
- 1.3 "Authorized User"** means any individual to whom Customer grants access authorization to use the Decision Cloud that is an employee, agent, contractor or representative of

- (a) Customer,
- (b) Customer's Affiliates, and/or

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

(c) Customer's and Customer's Affiliates' Business Partners.

1.4 "Business Partner" means a legal entity that requires use of a Decision Cloud in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer.

1.5 "Decision Cloud" means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by Element Data under an Order Form.

1.6 "Cloud Materials" mean any materials provided or developed by Element Data (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Customer. Cloud Materials do not include the Customer Data, Customer Confidential Information or the Decision Cloud.

1.7 "Confidential Information" means

(a) with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, (iii) Customer implementation plans, and/or (iv) Customer financial information, and

(b) with respect to Element Data: (i) the Decision Cloud, Documentation, Cloud Materials and analyses under Section 3.5, and (ii) information regarding Element Data research and development, product offerings, pricing and availability.

(c) Confidential Information of either Element Data or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.

1.8 "Consulting Services" means professional services, such as implementation, configuration, custom development and training, performed by Element Data's employees or subcontractors as

Element Data, Inc.
10900 NE 8th St. Suite 1170
Bellevue, WA 98004

described in any Order Form and which are governed by the Supplement for Consulting Services or similar agreement.

- 1.9 "Customer Data"** means any content, materials, data and information that Authorized Users enter into the production system of a Decision Cloud or that Customer derives from its use of and stores in the Decision Cloud (e.g. Customer-specific reports). Customer Data and its derivatives will not include Element Data's Confidential Information.
- 1.10 "Documentation"** means Element Data's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Decision Cloud which is made available to Customer with the Decision Cloud.
- 1.11 "Order Form"** means the ordering document for a Decision Cloud that references the GTC.
- 1.12 "Element Data Policies"** means the operational guidelines and policies applied by Element Data to provide and support the Decision Cloud as incorporated in an Order Form.
- 1.13 "Subscription Term"** means the term of a Decision Cloud subscription identified in the applicable Order Form, including all renewals.
- 1.14 "Supplement"** means the supplemental terms and conditions that apply to the Decision Cloud and that are incorporated in an Order Form.
- 1.15 "Usage Metric"** means the standard of measurement for determining the permitted use and calculating the fees due for a Decision Cloud as set forth in an Order Form.