



EloView™ Master Services Subscription Agreement

Welcome to EloView, a cloud- based, device content deployment and device management system from Elo Touch Solutions, Inc. ("Elo"). This EloView Services Subscription Agreement governs the subscription(s) to access and use Elo's Software as a Service ("EloView SaaS" or "EloView") through the Site (defined below) and any Evaluations (defined below) of EloView. By accepting this Agreement, either by clicking through electronically, signing a written version of this Agreement, or by executing an Order Form that references this Agreement, you confirm that you have reviewed this Agreement and that you are a representative of Customer duly authorized to accept this Agreement on Customer's behalf and to bind the Customer. **If you do not have the legal authority to bind the Customer, please do not check the box specifying that you and Customer accept the terms of this Agreement and refrain from using the Services. You and Customer may not access the Services if you or Customer are Elo's direct competitor unless Elo provided prior written consent to such access.**

Elo and Customer hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined will have the meaning ascribed to them below:

- a. "**Acceptable Use Policy**" means the Elo Acceptable Use Policy, as set forth in the EloView Additional Terms (defined below).
- b. "**Account**" means the account created for Customer's access to the Services via the Site.
- c. "**Account User**" means Customer's employees, contractors, agents, or other authorized designated users of the Service.
- d. "**Administrator**" means the Account User designated by Customer to administer the Account on Customer's behalf.
- e. "**Administrator Account**" means an account created for a user designated by Customer to administer the Account on Customer's behalf, which will be the first Account created.
- f. "**Affiliate**" means any entity that now or hereafter controls, is controlled by or is under common control with a party, where "control" means beneficial ownership, directly or indirectly, of more than 50% of the outstanding shares or other ownership interest (representing the right to elect directors or other managing authority or the right to make the decisions for such entity, as applicable), only for so long as such control exists.
- g. "**Agreement**" means this Master Services Subscription Agreement, including all schedules and attachments hereto, as it may be updated from time to time. Current versions of this Agreement can be found on the Site.
- h. "**Applicable Law**" means any applicable federal, state, or local laws or other country's applicable laws, rules, or regulations.
- i. "**Authorized Elo Device**" means an Elo Device authorized to access and use the Service.
- j. "**Confidential Information**" means information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include any information that (i) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (ii) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without access to the Disclosing Party's Confidential Information.
- k. "**Content**" means images, business related data, including agent data, and End User information and data, mobile, or web applications, websites, the display of purchases and communications with others uploaded

by Customer or its Users to the Site or User Account, or transmitted by Customer or its Users using the Services.

- l. **“Customer”** means the legal entity for which a representative of such entity accepted this Agreement or signed this Agreement, as applicable, on such entity’s behalf, and any Affiliates of such entity, making use of the Services hereunder.
- m. **“Data”** means Account information, business information, Content, or other similar data.
- n. **“Data Privacy Laws”** means any applicable law in effect governing Elo’s collection, use and processing of Customer personal data, including, without limitation, (i) the EU-U.S. and Swiss U.S. Privacy Shield Framework if Customer is located in the European Economic Area (“EEA”) or Switzerland; and (ii) the EU Data Protection Law if the Customer is located in the EU.
- o. **“Documentation”** means Elo’s formal user manuals, help and training materials, or other documentation that describe the Services or its use, accessible through the Site or otherwise made available to Customer by Elo.
- p. **“Effective Date”** means the earlier to occur of (i) the date Elo makes the Administrator Account available to Customer; or (ii) the date the first Order Form or this Agreement is signed by both parties.
- q. **“Elo Device”** means an Elo hardware device or product of any kind, including monitors and all-in-one computers.
- r. **“End User”** means Customer’s customers making use of Authorized Elo Devices.
- s. **“EloView Additional Terms”** means the additional terms and conditions applicable to the Service as may be updated from time to time and posted at www.elotouch.com/eloview/support.
- t. **“EloView Mode”** means the current Subscription options offered by Elo including without limitation, Core, Connect, and Control Subscriptions. Each EloView Mode includes a variety of key features as more fully described in the EloView Additional Terms.
- u. **“EU Data Protection Law”** means the applicable law in effect in the European Union (“EU”) governing the collection and use of Personal Data, including the EU General Data Protection Regulation (“GDPR”) and the EU e-Privacy Directive (as well as any successor laws or regulations to these).
- v. **“Malicious Code”** means code, whether in object or source format, scripts, programs, files, agents, or other tools intended to harm, hack into, or interfere with an intended use of a Software or the Service, including viruses, time bombs, malware, spyware, worms, Trojan horses, or other malicious or disruptive code.
- w. **“Online Order”** means any order for Subscriptions submitted at <https://manage.eloview.com/> for payment by an accepted credit card.
- x. **“Order Form”** means an Elo designated ordering document or Online Order specifying the Services to be provided under this Agreement, the Subscription Term, the number of Subscriptions, the applicable EloView Mode(s), the applicable Territory, and the Fees to be paid by Customer, and including any amendment, supplement, or extension thereof. An Order Form may be entered into by any of Elo’s designated worldwide subsidiaries, and such entity will be the contracting party for such Order Form.
- y. **“Personal Data”** shall mean “personal data” as defined by the applicable EU Data Protection Law.
- z. **“Pre-Release Services”** means Elo Services that are not generally available to customers and are designated as beta, pilot, limited use, limited release, pre-production, non-production, evaluation, or any other similar description.
- aa. **“Privacy Policy”** means the Elo Privacy Policy, as it may be updated from time to time, and posted at www.elotouch.com/privacy-policy.
- bb. **“Service”** or **“Services”** means the EloView SaaS services, including the underlying Software and related applications offered under this Agreement and ordered or subscribed to by Customer via an Order Form as made available by Elo online and further described in any Documentation. The Service expressly excludes any applications not provided and created by Elo.

- cc. **"Site"** means the website Elo uses to offer and administer the Services, currently being www.elotouch.com/eloview/ and any other successor or connected sites.
- dd. **"Software"** means any software, library, utility, tool, or other computer or program code (including any updates thereto) provided or made available by Elo and related website applications made available by Elo, whether installed locally on the Elo Device or otherwise accessed by Customer through the Internet or other remote means (such as websites, portals, and cloud-based solutions), including any related Documentation.
- ee. **"Special Category Personal Data"** means, as defined in Article 9 of the EU General Data Protection Regulation, Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, or data concerning health or sexual orientation or sex life of a person.
- ff. **"Storage Limit"** means the maximum amount of Content Customer may store in its Account while using the Service.
- gg. **"Subscription"** means a subscription to use or access the Service per Authorized Elo Device, as set forth in the applicable Order Form.
- hh. **"Subscription Term"** means the term of Customer's Subscription(s) to access the Services, as designated in the Order Form.
- ii. **"Territory"** means the country or countries specified in the Order Form, but such countries may only include one or more of the authorized countries as set forth in the EloView Additional Terms.
- jj. **"Third-Party Application(s)"** means a web-based or offline software application or service that is provided by any third party or by Customer and interoperates with the Service, including any application or tool that is referred to Customer by Elo or is otherwise hyperlinked through the Site.
- kk. **"User"** means the same as Account User."
- ll. **"User Account"** means a sub-Account created by the Account Administrator giving viewing access, content transmission, and other rights as may be designated by Elo, to the Account.

2. **Use of Services.**

- a. *Services Subscription.* Unless otherwise agreed by the parties in the applicable Order Form, (i) Customer must use and access the Service solely in the Territory during the Subscription Term and for the number of Subscriptions set forth in the applicable Order Form; (ii) the Service may be used to, among other features, manage Data; and (iii) additional Subscriptions may be added to the Account by entering into an additional Order Form with Elo. The Services are optimized for use with certain designated Elo Devices and may not perform, or not perform well, with other devices.
- b. *License and Use Restrictions.* Elo hereby grants Customer a limited, temporary, personal, non-exclusive, revocable, non-transferable license, solely for Customer's benefit, without the right to sublicense, to use the Services during the Subscription Term, in accordance with this Agreement. All rights not explicitly granted herein are reserved to Elo. Customer must not, directly or indirectly (i) use the Services to store or transmit any infringing, libelous, malicious, or otherwise unlawful or tortious content, or to store or transmit content in violation of any third-party privacy rights or in violation of this Agreement; (ii) interfere with or disrupt the integrity of the Services or any third-party data stored therein, (iii) attempt to gain unauthorized access to the Services or related systems or networks; (iv) use the Services to develop any competing product or service, create benchmark data, reverse engineer, disassemble, or decompile the Services or otherwise copy a Service or any part, feature, function, or user interface; (v) share an Account Administrator or Account User's password with any third party; (vi) exceed the Subscriptions set forth in the Order Form; (vii) permit direct or indirect access to or use of any Service in a way that circumvents a usage limit hereunder; (viii) make any Service available to, or use any Service for the benefit of any third party other than Customer or the Account Users; (ix) remove or alter any of Elo's or its licensors' restrictive or ownership legends on or in any Software, Service or Site, and must reproduce such legends on all copies explicitly permitted to be made, if any; or (x) store more than the applicable Storage Limit of Content for the applicable EloView Mode while using the Service. The Services may only be used in the Territory and Customer must be authorized to conduct business in the Territory where the Service is being used. Customer may

download updates to the Service as made available to Customer by Elo so long as the Account is current. Elo approved versions of the Software is required for use of the Services. The Service is not part of any other product or offering, and the purchase of any other product will not be sufficient to obtain access to the Service. Elo may suspend or terminate the Service, and the limited license granted to Customer hereunder and any Account Users, for unauthorized use of the Service or the Site, or Customer's violation of this Agreement.

- c. *Additional Terms of Use.* Any Elo Device purchased either from Elo or from any of Elo authorized distributors or resellers for any use, including in connection with the Service, and the use of the Service is subject to Elo's then-current terms and conditions of sale (the "Elo Terms of Sale") available at www.elotouch.com/terms-of-sale and as may be updated by Elo from time to time. If there is a conflict between this Agreement and the Elo Terms of Sale, this Agreement will govern as it relates to the Service and the Elo Terms of Sale will govern as it relates to such Elo Device purchase. This Agreement incorporates by reference the current Elo Terms of Sale, Privacy Policy, EloView Additional Terms, and Acceptable Use Policy, and Customer hereby confirms that it has read, understands and will comply with such terms and such policies. Certain Service functions may further be subject to third party license terms and Customer's use thereof is expressly subject to such license terms, which may be accessed either through the applicable third party-provider's site or available via the Site.
- d. *Usage Responsibilities.* Customer will (i) be responsible for the legality, accuracy, and quality of Customer's Data, including the Content that Customer stores or transmits using the Site and the Service; (ii) use the Service only in accordance with the applicable Documentation and all Applicable Law; (iii) be responsible for all Account Users' compliance with this Agreement, the Privacy Policy, and the Acceptable Use Policy; (iv) use reasonable efforts to safeguard and prevent damage to, or loss of, or unauthorized use or access to, the Service and notify Elo promptly of any such damage, unauthorized use, or any suspicion thereof; and (v) if Customer subscribes to any Third-Party Application or product that interfaces with the Site or the Service, Customer will comply with and be responsible for Account Users' compliance with the terms of use of such offering and with all Applicable Laws. Customer will be responsible to support the Account Users regarding issues that are particular to their access to the Service (e.g., resetting passwords, suspending accounts, sharing Customer's notes). The Account administrator will be responsible for uploading Content and training Account Users to properly use the Service and for backing up any Content, including any Application Package Kit (each, an "APK"), prior to uploading for transmission using the Service. If Customer exceeds a contractual usage limit of the Service (i.e. number of Subscriptions, Storage Limit), Elo may, in its sole discretion, work with Customer to seek to reduce such usage of the Service or charge Customer an additional fee to reflect Customer's actual usage. .
- e. *End User Information and Data.* Customer acknowledges that under the architecture of Elo Devices and the Service, Elo neither controls the Content nor distribution of the Content and has no access to End Users. If Customer intends to collect any information or Personal Data from End Users (collectively, "End User Information"), Customer will be the controller of such Personal Data and it is Customer's sole responsibility to comply with all Applicable Laws, including expressly Data Privacy Laws, with respect to the collection of such End User Information. It is Customer's responsibility to obtain any necessary permissions or consents under applicable Data Privacy Laws.
- f. *Content Transmission.* As part of the Service, Customer may upload Content to the Site. Customer will not upload any Content using the Service or Site unless Customer has created that Content itself or Customer has consent from the owner(s) of such Content to do so. Customer will not upload or transmit any Malicious Code via the Service. The upload or delivery of Content using the Service will be done in accordance with the applicable instructions on the Site and the terms of this Agreement. In the event Elo receives an abuse complaint that relates to Customer's use of the Service, whether such use is by Customer, Account Users, or End Users, Elo will notify Customer and Customer will immediately address such complaint and follow-up until such complaint has been resolved to Elo's satisfaction. Elo reserves the right to determine, in its sole discretion, whether any Content complies with the Acceptable Use Policy and is satisfactory for use with the Service, and may suspend use of the Service pending any investigation of a violation of the Acceptable Use Policy and/or remove any Content it deems in violation thereof.
- g. *Sensitive Data/HIPPA.* The parties acknowledge that the Services are not designed to transmit any personally identifiable information ("PII"), such as credit card data, national identity number, and the like.

Customer will not upload to the Service or use it to collect: (i) any PII; or (ii) any patient, medical, or other health-related information, including information regulated by HIPAA (defined below) or any similar Applicable Law; (iii) any other sensitive information subject to regulation or protection under Applicable Law such as the Gramm-Leach-Bliley Act (or related rules or regulations), or (iv) Special Category Personal Data. For purposes herein, the foregoing (i) through (iv) will be collectively referred to as "Sensitive Data." Customer acknowledges that Elo is not acting as Customer's Business Associate or subcontractor (as such terms are defined and used in HIPAA), and that the Service is not HIPAA compliant. "HIPAA" means the Health Insurance Portability and Accountability Act, as amended and supplemented. Notwithstanding any other provision to the contrary, to the maximum extent permitted by Applicable Law, Elo has no liability for any Sensitive Data.

- h. *High Risk Applications.* Customer may not use the Services or any Elo Devices where such use could affect any systems relating to the control of hazardous environments, including those requiring fail-safe performance (including medical applications, such as cardiac pacemakers, defibrillators, life support, electrodes, leads, and programmers, and components therefor, aircraft navigation or communication systems, air traffic control, nuclear facilities or applications, or any other application in which the failure of the Elo Device or the Service could lead to death, personal injury, or severe physical or property damage).
- i. *Elo's Use of Data.* Elo collects, analyzes, formats, organizes, and relays non-personal information generated in connection with the Service and may incorporate results into future service offerings, including by analyzing Account Users' information, End User Information, or the use of a hardware device, or otherwise to analyze the Content and the Elo Device's use as it pertains to a general group of users. Elo uses information collected from cookies and other technologies to improve Customer's general user experience and the overall quality of the Service. Elo uses technological analytics, whereby automated systems analyze Customer's Content and use of the Services to offer Customer relevant product features, including customized statistical analysis, results, and tailored advertising. Elo may additionally aggregate Customer's Content, Site, and Elo Device use data, and may use or share aggregated, non-personally or User identifiable information publicly and with our partners – like publishers, advertisers, other customers, or connected sites. Elo may also access Customer's Account using Customer's password to debug the Service and in doing so may change the password and restore the Service to their original state. In so doing, Elo may provide links to third parties' websites or services that are accessible through the Site. Elo does not control such third parties or their services. These third parties may have their own terms of use and other policies, and Customer should review any such terms and conditions before submitting any information or Personal Data to such third parties. Customer will comply with such terms and policies as well as this Agreement when Customer uses such services, and the use of such services is at Customer's sole risk and expense. In addition, any Personal Data submitted by Customer, an Account User, or an End User will at all times remain subject to Elo's Privacy Policy. While Elo does take measures to protect Customer's personal and business information under such Privacy Policy, Elo has no responsibility and assumes no liability for any of Customer's Content, including any loss or damage to such Content. Customer is solely responsible for obtaining proper backup of Content and Data, keeping passwords secure and for any and all activity that occurs in the Account.
- j. *Processor Obligations.* If Customer is located in the, EU, EEA or Switzerland, the "Personal Data Processing Terms and Conditions" set forth in **Schedule I**, attached hereto and incorporated herein, shall apply.
- k. *License to Elo.* Customer grants Elo a royalty-free, worldwide, transferable, nonexclusive right and license to use Customer's Content and Data, in all media now existing or created in the future, solely as Elo deems necessary to enable Customer to use the Service, to debug the Service, or to use as outlined herein to analyze, aggregate with other customers' data, and provide and offer analytics services and data in an aggregated and anonymized format. Elo may sublicense the rights granted to it hereunder to a subcontractor or other third parties for use in similar services or to Elo customers in accordance with Applicable Law and the terms of this Agreement. To the extent required by this Section 2, Customer will obtain any required consents of Users or End Users to permit Elo's use of such Content, Data or other information.
- l. *API License.* To the extent Customer's contracted Services include a license to the EloView application program interface, including any sample code or scripts (the "API"), Customer's use of the API and any

related documentation will be subject to the separate license terms governing the download of such APIs electronically from an Elo designated Site.

- m. *Evaluation.* If Customer subscribes for a free trial or an evaluation of the Service, including in conjunction with an Elo Device provided to Customer by Elo for this evaluation (the "Evaluation"), either through the Site or an Order Form, Elo will make certain Services available to Customer in accordance with the "Evaluation Terms and Conditions" set forth **Schedule II**, attached hereto and incorporated herein.

3. Elo Duties.

- a. *Provision of Services.* Elo will make the Service available to Customer pursuant to this Agreement and the applicable Order Form(s) during the Subscription Term. In addition, Elo will provide standard Services support directly to the Administrator, in accordance with the then-current terms and conditions for the applicable EloView Mode ("Support"). Elo may, at its discretion, make available to Customer Software updates related to, but not limited to, security, patch updates, bug fixes, error corrections, and the like. If Customer elects to install any such Software updates, Customer must accept any push notification requiring acceptance prior to installation of such updates to ensure that Customer is using the most recent version of the Service. Elo will have no obligation to provide Support for issues arising out of: (i) any abuse, misuse, accident, or neglect; (ii) repairs, alterations, and/or modifications to any Software or Elo Device or combination of the Services with a Third-Party Application; (iii) Customer's environment including any internet or network access issues; or (iv) use of the Services outside the scope of the Documentation or in conflict thereof.
- b. *Customer's Data.* Elo will maintain reasonable administrative, technical, and physical safeguards for protection of the security, confidentiality, and integrity of Customer's Content and Personal Data, subject to the terms and conditions set forth herein. Those safeguards will include measures for preventing access, use, modification, or disclosure of Customer's Content by Elo personnel, except (i) as compelled by a court of competent jurisdiction or by law; (ii) as necessary in order to provide the Service; or (iii) as Customer permits or instructs us in writing. The use of Customer's Personal Data is additionally subject to the Privacy Policy, as further detailed herein.
- c. *Elo Personnel.* Elo personnel will not have any employment relationship with Customer and the relationship of the parties will be that of independent contractors. Elo will be responsible for the performance of its personnel, including employees and contractors, regarding compliance with the obligations herein.

4. Customer Account Obligations.

- a. After creating the Account and entering into or confirming acceptance of this Agreement, Elo will enable Customer to create and access Customer's Account and the Administrator Account, the latter of which will include an administrative console ("Admin Console") that will permit Customer to perform certain administrative functions relating to Account Users, including creating an User Account, authorizing an Elo Device, removing an Account User, and otherwise using the Service and suspending or terminating Account access. Account Users will be required to have a separate User Account linked to the Administrator Account and Customer is required to provide each Account User who is not Customer's employee with a copy of this Agreement and obtain each individual's consent to be bound by such terms prior to the use of the Services, unless they have otherwise accepted the EloView terms of use by clicking through them when setting up the User Account. Customer understands that a violation of the terms of this Agreement by an Account User may result in the suspension or termination of such Account User's User Account and/or Customer's Account and Customer's access to the Service. Customer is fully responsible for each Account User's compliance with this Agreement and will indemnify and hold Elo harmless from and against any damages or liability resulting from use of the Service by Customer's Account Users in violation of the terms of this Agreement. Customer will not make any representation, warranty, or guaranty to any Account User on behalf of Elo, or otherwise bind Elo in any manner. In order to access aspects of the Services, Customer may be required to provide current, accurate identification, contact, and other information as part of Customer's registration and/or continued use of such Services.
- b. In addition to the Elo requirements, Customer may establish Customer's own rules for Account Users' access and use of the Service. Any such rules will only affect the relationship between Customer and Customer's Account Users and must be at least as restrictive as the terms of this Agreement. Without limiting the foregoing, Customer is responsible for determining and obtaining any permissions from Account

Users necessary to enable Customer to perform the administrative functions available through the Admin Console and enforce any applicable rules. Further, Customer will prevent unauthorized use of Customer's Administrator Account, and will immediately notify Elo of any unauthorized use of or access to the Service of which Customer becomes aware.

- c. Customer is responsible for (a) administering all Account Users' access through the Admin Console; (b) maintaining the confidentiality of the password of each Administrator Account and User Account; (c) maintaining accurate and current account and contact information for each Administrator Account and User Account; (d) ensuring that all use of each Account complies with this Agreement and Applicable Laws; and (e) all activities that occur under Customer's Account. Customer will be solely responsible for ensuring that Customer has designated appropriate and necessary individuals as Administrators and for removing Account privileges from individuals who no longer require them. **CUSTOMER ACKNOWLEDGES THAT IF NO ACCOUNT ADMINISTRATOR IS ABLE OR WILLING TO FULFILL SUCH FUNCTION AND/OR CUSTOMER OTHERWISE FAILS TO MAINTAIN CONTROL OF THE ADMINISTRATOR ACCOUNT(S), CUSTOMER MAY BE UNABLE TO ACCESS OR CONTROL THE ACCOUNT OR TO BENEFIT FROM THE SERVICE, AND CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ANY RESULTING LOSSES, COSTS, AND EXPENSES.**

5. Payment for Services.

- a. *Fees for Services.* Customer will pay the fees specified in the applicable Order Form (the "Fees") for the right to use the Service subject to the terms hereof. These Fees are based upon the number of purchased Subscriptions, and not on actual usage of the Subscriptions. The Subscription commitment and the Fees are non-cancellable and non-refundable. Account access for any Administrator Account and User Accounts will be suspended upon expiration of any Subscription Term, unless the parties renew the Subscription Term in accordance with Section 12.b. herein. If Customer chooses to download an Elo mobile application that carries an additional fee, Customer will be responsible for such per application download fee in addition to the Fees. Elo generally reserves the right to change its Fees at any time, provided however, that Fees set forth in an Order Form will remain in effect for the applicable Subscription Term.
- b. *Invoicing and Payment.* All payments will be in U.S. dollars, unless other currency is designated in the Order Form. Fee charges are made in advance annually, unless other billing frequency is explicitly stated in the Order Form. Invoiced charges are due net thirty (30) days from the invoice date, unless otherwise stated in the Order Form. Elo may accept the following payment methods for the Services: (1) payment by credit card, (2) payment by check upon prior approval of Elo and issuance of an invoice by Elo, or (3) an alternative payment method accepted by Elo such as wire transfer to an Elo designated bank account (each, an "Accepted Payment Method"). Customer agrees that: (i) Customer will fulfill Customer's obligation to pay the Fees by the date on which payment is due; (ii) any payment information Customer provides is true and accurate; (iii) Customer is authorized to use the Acceptable Payment Method; (iv) Elo or its subcontractor(s) has permission to retain the payment information, including all submitted debit and credit card information, submitted by Customer and Customer's issuing bank or the applicable payment network, if credit card payment has been approved by Elo; and (v) Elo is authorized to charge Customer the Fees for the Service using the Accepted Payment Method and the information Customer provides that is stored in Customer's Account as of the applicable date for payment. Customer expressly guarantees payment to Elo and recognizes that Elo's rights to collect payment includes any obligation Customer may have to pay any Taxes (as defined below) or delivery charges described as being applicable to the Service. Unless otherwise expressly provided in an Order Form, Elo will issue its invoice on or shortly after the date on which the Service is purchased and on any periodic basis as agreed in the applicable Order Form. All payments of invoiced amounts must be made in the currency specified by check, wire, or other electronic transfer to a bank and account designated by Elo in writing. Any invoice that remains unpaid for thirty (30) days after the invoice date is considered delinquent. Any wire transfer fees or other similar fees incurred on account of the payment method selected by Customer are Customer's responsibility and may not be deducted from the amount due Elo. In addition, Customer will be responsible for any credit card chargeback fees as well as any reasonable collection costs Elo may incur as a result of Customer's failure to pay on a timely basis. If Customer purchases a Service that renews automatically, such as monthly, quarterly, or annually, Customer acknowledges that Elo may process Customer's Accepted Payment Method on an annual or other renewal term (based on the applicable billing cycle), on the calendar day corresponding to the commencement of Customer's Subscription Term, as applicable. In addition, Customer acknowledges

that Elo has its permission to retain and/or share with financial institutions and payment processing firms (including any institutions or firms Elo may retain in the future) information regarding Customer's purchase and Customer's submitted payment information in order to process Customer's purchase. If Customer's purchased Subscription began on a day not contained in a subsequent month (e.g., Customer's Service began on January 30, and there is no February 30), Elo will process Customer's payment on the last day of such applicable, subsequent month).

- c. *Taxes.* Customer is responsible for any taxes, including sales, use, excise, added value (VAT), consumption, withholding, and similar taxes, as well as all customs, duties, or governmental impositions, excluding only taxes on Elo's net income (collectively, "Taxes"), and Customer will pay Elo all Fees due hereunder without any reduction for Taxes. If Elo is obligated to collect or pay Taxes, Elo will invoice Customer for the Taxes unless Customer provides Elo with a valid tax exemption certificate, VAT number issued by the appropriate taxing authority, and/or other documentation providing evidence that no tax should be charged. Customer acknowledges that U.S. sales tax will be sourced by the primary use service address(es) on the Order Form.
- d. *Deductions.* Customer will pay all Fees without any deduction or withholding for or on account of Tax (a "Tax Deduction"), unless such Tax Deduction is required by applicable law, and Customer will make reasonable efforts to determine whether Elo is entitled under any applicable Tax treaty to a reduction in the rate of, or the elimination of, any such applicable Tax Deduction before making any such Tax Deduction. Customer will promptly notify Elo prior to the due date of the Tax Deduction in order to confirm that there is clarity as to the application of the Tax Deduction. If Customer is required by applicable law to make a Tax Deduction, Customer will apply the reduced rate of withholding, or dispense with withholding, as applicable. Within thirty (30) days, Customer must provide Elo with an official tax receipt or other appropriate documentation to support such payment. Customer and Elo will reasonably collaborate with respect to any audits, disputes, or requests for information related to Taxes, including the provision of all relevant information, documents, and reasonable support, and such obligation will survive the termination of this Agreement.
- e. *Suspension of Service and Acceleration.* If any amount owed by Customer under this Agreement or an Order Form for Services is thirty (30) or more days overdue, Elo may, in addition to its rights or remedies otherwise available under this Agreement or under Applicable Law, accelerate Customer's obligations to pay the Fees hereunder to be immediately due and payable. In addition, Elo may suspend the Services to Customer until such amounts are paid in full. Elo agrees to provide Customer with at least seven (7) business days' notice that Customer's Account is overdue before suspending any Services.
- f. *Overdue Charges and Costs of Collection.* If any invoiced Fee is not received by Elo by the due date thereof, then in addition to the Fees, Customer will pay all reasonable costs Elo may incur to collect any unpaid or past due amounts, including reasonable attorneys' fees and other associated costs. Any delinquent payments will also accrue interest at the rate of 1.5% of the outstanding balance per month or the highest rate permitted under Applicable Law, whichever is lower, from the payment due date until paid in full.
- g. *Third-Party Applications.* Customer may be able to download and/or use Third-Party Applications through use of the Service. The Fees for the Service do not include any of the third party fees Customer may incur in connection with using the Service, including fees charged by Customer's Internet access provider, any wireless carrier charges for cellular or data services, and any other Third-Party Applications with which Customer may use the Service. Customer is solely responsible for selecting and managing these other services, and paying the fees for such services. Use of any such applications may be subject to additional terms and conditions (including the fees) and may also subject Customer to additional regulatory or legal requirements, which terms are exclusively between Customer and the applicable third party. Elo has no responsibility or liability associated with any use of such Third-Party Applications or the information Customer submits to a Third-Party Application not controlled by Elo, including the method of collection storage use or otherwise. Any hyperlinks on the Site to Third-Party Applications are not sponsored by or affiliated with the Service or Elo, and Elo makes no representations or warranties regarding such Third-Party Applications. Customer acknowledges that with respect to any Personal Data collected by Third-Party Applications, either Customer or the licensor of the Third-Party Application is the controller for purposes of

EU Data Protection Law, and Customer will indemnify Elo under Section 10 for any damages incurred by Elo as a result of the Third-Party Applications.

6. **Confidentiality.** By accessing the Services, Customer will have access to certain Confidential Information of Elo, including but not limited to methods, techniques, programs, devices, and operations and any other information Elo may designate as “Confidential Information.” Customer’s Confidential Information includes the Content and Data. Both parties’ Confidential Information includes the terms and conditions of this Agreement and each Order Form (including the pricing terms therein). Customer and Elo each (i) will only use Confidential Information as explicitly permitted in this Agreement, (ii) will not disclose any of Confidential Information of the Disclosing Party to any third party except as permitted in this Agreement and (iii) will not disclose or use the Confidential Information following the termination of the Service Subscription Term, unless otherwise explicitly permitted herein. Each party will take reasonable efforts to protect the Disclosing Party’s Confidential Information from disclosure to third parties except as explicitly permitted herein, and apply measures consistent with those applied to the Receiving Party’s protection of its own Confidential Information. Upon the Disclosing Party’s request, at any time, the Receiving Party will promptly return or destroy all copies of Confidential Information of the Disclosing Party. The Disclosing Party will be entitled to seek injunctive relief in the event of any unauthorized use or disclosure, whether or not intentional, of its Confidential Information. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided that the Receiving Party first notifies the Disclosing Party in advance of the compelled disclosure (to the extent legally permitted) and provides reasonable assistance in order to permit the Disclosing Party to contest such disclosure.
7. **Proprietary Rights.**
 - a. Elo respects the intellectual property rights of others and requires that Customer does the same via this Agreement. As such, Elo may suspend or terminate the access privileges of Customer to the Service if it infringes the copyrights or other intellectual property rights of Elo, or others. Elo retains all ownership and intellectual property rights to the Service and Site. Without limitation, Elo owns the Elo Trademarks (as defined below), the domains, Software and all other content made available through the Site by Elo, as well as the copyrights in and to the Site and the technology used in providing the Service. Customer will not acquire any right, title, or interest therein under this Agreement or otherwise to any intellectual property right owned by Elo other than the license rights granted herein. Customer will not modify, disassemble, decompile, reverse translate or create derivative works from the Software or otherwise attempt to derive the source code of such Software, or allow any third party do so. No right or license is granted or implied under any of Elo’s, or its licensors’, patents, copyrights, trademarks, trade names, service marks, or other intellectual property rights beyond the rights explicitly set forth in this Agreement.
 - b. The “Elo Trademarks” include the Elo logo, Elo Touch, EloView and Elo Touch Solutions. The Elo Trademarks and other marks, graphics, logos, icons, and service names related to the Service are registered and unregistered trademarks, or trade dress, of Elo. The Elo Trademarks may not be used without Elo’s express prior written permission. Other than the Elo Trademarks, all other trademarks appearing on this Site or as part of the Service (“Third-Party Marks”) are trademarks of their respective owners. Customer may not use Third-Party Marks without the written permission of such third-party owner(s).
 - c. Elo claims no ownership over any Content submitted, posted, or displayed by Customer on or through the Services. Customer or a third-party licensor, as appropriate, retain all intellectual property rights in such Content, and Customer is solely responsible for protecting such rights, as appropriate. Customer hereby grants Elo a worldwide, royalty-free, perpetual, right and license to use and incorporate into the Service any comments, suggestions, recommendations, feedback, or other information submitted by Customer.
8. **Privacy.**
 - a. The use of any Services is subject to the Privacy Policy. Via such policy, Elo takes measures to protect the personal and business information of its customers stored or transmitted while using the Service. In the event that Elo determines that such safeguards have been breached or violated and Customer’s information has been compromised, Elo will notify Customer and any law enforcement agency or other institution as Elo may be required to notify by applicable Data Privacy Laws (and further subject to Section Schedule I should Customer be located in the EEA or Switzerland). It is Customer’s responsibility to notify Customer’s

End Users. Personal information that Customer may supply to Elo, and any information about Customer's use of the Service that Elo obtains from Customer, the Account Administration, any Account User or End User, including Content, are all subject to the terms of the Privacy Policy. In addition, Elo email addresses are provided solely for user queries relating to Elo. As such, the capture of emails for use with unsolicited email is not permitted. Customer authorizes Elo to verify identifying information about Customer, including by the access and use of public information. Customer further permits Elo to periodically obtain credit or other public reports regarding Customer and/or Customer's business to determine whether Customer meet the requirements for an Account.

- b. Elo and its partners or subcontractors may provide certain features as part of the Service that rely upon device-based location information. To provide such features, Elo may collect, use, transmit, process, and maintain Customer's location data, including the real-time geographic location of Customer's Elo Device, and Customer hereby consents to Elo's collection, use, transmission, processing, and maintenance of such location data to provide such features of the Service. Such collected information may include device ID, device type, and real-time geographic location of Customer's device at the time of Customer's request. Customer hereby acknowledges that Elo may associate certain PII with the location of Customer's device. In addition, Elo may store Customer's "last known location" on Customer's device, and collect, maintain, or track Customer's location history. If Customer's location data is transmitted by Elo to a partner in order to provide a feature or service, it is passed anonymously and not shared in such a way as to be personally identifiable. Currently, various browsers – including Internet Explorer, Firefox, and Safari – offer a "do not track" or "DNT" option that relies on a technology known as a DNT header, which sends a signal to Web sites' visited by a browser user about the user's browser DNT preference setting. Customer may enable or disable those capabilities through the browser of Customer's choice. Elo currently adopts the browsers' DNT signals, as applicable.

9. **Indemnification.**

- a. *Elo's Indemnification Obligations.* Elo will defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, reasonable attorney fees, and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer, provided Customer (a) promptly gives Elo written notice of the Claim Against Customer, (b) gives Elo sole control of the defense and settlement of the Claim Against Customer (except that Elo may not settle any Claim Against Customer unless Elo unconditionally releases Customer of all liability), and (c) gives Elo all reasonable assistance, at Elo's expense. Should Elo receive information about an infringement or misappropriation claim related to the Service, Elo may in its sole discretion and at no cost to Customer (i) modify the Service so that it no longer infringes or misappropriates, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon thirty (30) days' written notice and refund Customer any prepaid Fees covering the remainder of the Subscription Term. The above defense and indemnification obligations do not apply to the extent a Claim Against Customer arises from a third party product, service, or application, the combination of such third party offering with the Services, or Customer's breach of this Agreement. Elo's indemnification obligations set forth in this Section 9.a do not apply to any claims related to or arising from any Evaluation(s). THIS SECTION 9.A. STATES ELO'S SOLE LIABILITY TO AND CUSTOMER'S EXCLUSIVE REMEDY AGAINST ELO FOR ANY CLAIM AGAINST CUSTOMER.
- b. *Customer's Indemnification Obligations.* Customer will protect and fully indemnify Elo, its Affiliates, and any third party service provider (and all of its or their respective employees, directors, agents, affiliates, and representatives) from any and all claims, liability, damages, expenses, and costs (including reasonable attorney's fees) caused by or arising from Customer's use of the Service, including uploading Content, Customer's (or Customer's Account Users') breach or other violation of the terms of this Agreement, including any representations, warranties, and covenants herein, or Customer's infringement, or infringement by any other user of Customer's Account, of any intellectual property rights of Elo or a third party provided Elo (i) promptly gives Customer written notice of the claim, (ii) gives Customer sole control of the defense and settlement of such claim (except that Customer may not settle any such claim without Elo's consent unless Customer unconditionally releases Elo and its Affiliates of all liability and does not

cause any reputational damage to Elo or such Affiliates), and (iii) gives Customer all reasonable assistance, at Customer's expense.

10. **Representations and Disclaimers.**

- a. Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- b. CUSTOMER UNDERSTANDS THAT CUSTOMER'S USE OF THE SITE AND SERVICES (INCLUDING ANY DOWNLOADS OR ANY LOSS OF DATA OR OTHER DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR CUSTOMER EXPERIENCE FROM USING THE SITE AND SERVICE) IS AT CUSTOMER'S SOLE RISK. CUSTOMER UNDERSTANDS THAT THE SITE AND SERVICES AND ALL INFORMATION, PRODUCTS, AND OTHER CONTENT (INCLUDING THIRD PARTY SITE INFORMATION, PRODUCTS, AND CONTENT INCLUDED IN OR ACCESSIBLE FROM THE SITE OR SERVICE), ARE PROVIDED ON AN "AS IS, WHERE IS" AND "WHERE AVAILABLE" BASIS, AND ARE SUBJECT TO CHANGE AT ANY TIME WITHOUT NOTICE TO CUSTOMER. CUSTOMER ACKNOWLEDGES THAT ELO MAKES NO WARRANTY THAT THE SITE OR SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. CUSTOMER UNDERSTANDS THAT ELO DOES NOT WARRANT THAT THE RESULTS OBTAINED FROM CUSTOMER'S USE OF THE SITE OR SERVICES WILL MEET CUSTOMER'S EXPECTATIONS. NO WARRANTY OF ANY KIND, WHETHER ORAL OR WRITTEN, CAN MODIFY THE TERMS OF THE DISCLAIMER SET FORTH HEREIN. CUSTOMER'S USE OF THE SITE IS AT CUSTOMER'S OWN RISK. TO THE FULLEST EXTENT PERMITTED BY LAW. ELO DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS OF ANY KIND (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS) AS TO THE SITE AND SERVICES AND ALL INFORMATION, PRODUCTS, AND OTHER CONTENT (INCLUDING THIRD PARTY SITE INFORMATION, PRODUCTS, AND CONTENT) INCLUDED IN OR ACCESSIBLE FROM THE SITE AND SERVICES. UNDER NO CIRCUMSTANCE WILL ELO BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY CUSTOMER'S RELIANCE ON INFORMATION OBTAINED THROUGH THE SITE OR A LINKED SITE, OR CUSTOMER'S RELIANCE ON ANY PRODUCT OR SERVICE OBTAINED FROM THE SITE OR A LINKED SITE.

11. **Limitation of Liability.**

- a. OTHER THAN ITS INDEMNIFICATION OBLIGATIONS HEREUNDER, ELO'S TOTAL LIABILITY AND OBLIGATIONS WITH RESPECT TO ANY CLAIM(S) RESULTING OR ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, STATUTORY WARRANTY AGAINST DEFECTS, NEGLIGENCE, STRICT LIABILITY, TORT, PRODUCT LIABILITY, OR OTHER LEGAL THEORY WILL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL FEES RECEIVED BY ELO FOR THE SERVICES DURING THE PRECEDING TWELVE (12) MONTHS.
- b. NEITHER ELO NOR ITS THIRD PARTY SERVICE PROVIDER OR ANY OF THEIR AFFILIATES, OR ACCOUNT PROVIDERS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES, REGARDLESS OF LEGAL THEORY, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. **Term.**

- a. *Agreement Term.* This Agreement will be effective upon the Effective Date and will remain in effect until the earlier of the following occurs: (i) this Agreement is terminated in accordance with Section 13 herein or (ii) all Subscription Terms for the Service hereunder have expired or have been terminated.
- b. *Service Renewal.* Except as otherwise provided in the applicable Order Form, Customer's access to and right to use the Service will cease at the end of the applicable Subscription Term, unless the parties agree to renew the Services for an additional period and Customer pays the applicable Fees to continue its use of such Services prior to the expiration of such Subscription Term. Following expiration of a Subscription Term, this Agreement itself will not automatically terminate unless otherwise terminated by either party in accordance with Section 13 herein or as otherwise provided herein.

13. **Termination.**

- a. Customer may terminate this Agreement or suspend Customer's Account by contacting Elo, provided that in no circumstances will Customer be entitled to any refund of Fees paid or any credit against Fees that are due to Elo as of the date of such termination, or for the remainder of any Subscription Term. Elo may terminate this Agreement, without cause or reason, upon no less than fifteen (15) days' prior written notice to Customer, so long as all Subscription Terms will be expired or terminated by the termination date. In addition, either party may terminate this Agreement in the event the other party breaches or defaults any material term of this Agreement, and fails to remedy such breach or default within thirty (30) days after written notice of such breach or default from the non-breaching or non-defaulting party. If any Account User violates the Acceptable Use Policy, Elo may immediately suspend the Services and/or such Account User's access to the Services. Notwithstanding the foregoing, either party may terminate this Agreement immediately in the event of a material breach by the other party of its obligations under Section 7 (*Confidentiality*). If Customer terminates this Agreement due to a breach by Elo hereunder, Customer's sole and exclusive remedy, and the entire liability of Elo for such breach, will be a refund of Fees paid by Customer to Elo in the twelve (12) months prior to the effective date of termination.
- b. If Customer: (i) becomes insolvent; (ii) voluntarily files or has filed against it a petition under applicable bankruptcy or insolvency laws which Customer fails to have discharged or terminated within thirty (30) days after filing; (iii) proposes any dissolution, composition, or financial reorganization with creditors or if a receiver, trustee, custodian, or similar agent is appointed or takes possession with respect to all or substantially all assets or business of Customer; or (iv) Customer makes a general assignment for the benefit of creditors, Elo may immediately terminate this Agreement by providing written notice.
- c. The termination of this Agreement will, as of the effective date of such termination, terminate Customer's and its Account Users' access to the Service and all other rights granted to Customer hereunder; provided, however, that any termination is without prejudice to the enforcement of any undischarged obligations existing at the time of termination. The following provisions of this Agreement will survive the termination of this Agreement: Sections 2.k (*License to Elo*), 6 (*Confidentiality*), 7 (*Proprietary Rights*), 8 (*Privacy*), 9 (*Indemnification*), 10 (*Representations and Disclaimers*), 11 (*Limitation of Liability*), and 14 (*General*).

14. **General.**

- a. *Entire Agreement.* This Agreement along with the Schedules, Order Forms, Elo's current Privacy Policy, Elo's current Acceptable Use Policy, and Elo's current EloView Additional Terms constitute the entire agreement between Customer and Elo regarding the access to the Service. Any term or condition in any other order, purchase order, confirmation, or other document furnished by Customer or Elo which is in any way inconsistent with, or in addition to, the Order Form and this Agreement is hereby expressly rejected and will be null and void. Customer represents and warrants that any and all correspondence pertaining to a purchase of Services will be in English. Any waiver of default will not waive subsequent defaults of the same or different kind. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of the Agreement will continue in full force and effect. Headings are included for convenience only and will not be considered in interpreting this Agreement. There will be no presumption against the drafter of the Agreement. Customer acknowledges that Elo may provide notice to Customer and other information concerning the Services electronically, including notice to any email address supplied by Customer.
- b. *Assignment.* Customer may not assign this Agreement or any of the rights or obligations hereunder, by operation of law, reorganization, change of control, or otherwise, without the prior written consent of Elo and any attempted assignment will be void.
- c. *Federal Government End User Provisions.* In the event the Customer is a department of the United States Government, the provisions in this section will apply with regard to the access to, and use of, the Service and Software. No Government procurement regulation or contract clauses or provision will be deemed a part of any transaction between the parties under this Agreement unless its inclusion is required by law, or mutually agreed upon in writing by the parties in connection with a specific transaction. Customer acknowledges that the Service and Software are commercial items that may consist of "commercial computer software" and "commercial computer software documentation" as such terms are defined in 48

C.F.R. 252.227-7014(a)(1). Such materials are provided solely as “commercial computer software”, “commercial computer software documentation” and “technical data” as such terms are used in 48 C.F.R. 12.212 and FAR 12.211. Computer software and technical data are provided as “restricted computer software and “limited rights data” under 48 CFR 52.227.14 Alternative I.

- d. *Export Compliance.* The export and re-export of Customer’s Content or Data via the Services may be controlled by the United States Export Administration Regulations or other applicable export restrictions or embargo (“Export Regulations”). The Services, Elo Devices, and Documentation may not be used in countries prohibited by Export Regulations, including Cuba; Iran; North Korea; Sudan; or Syria or any country that is subject to an embargo by the United States, and Customer agrees that it will not use the Services or Elo Devices in violation of any Export Regulations. In addition, Customer must ensure that the Services are not provided to persons on the United States Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals. Customer will comply with all applicable export laws and regulations, trade and export restrictions, trade embargoes and prohibitions, and national security controls of any relevant governmental authority.
- e. *Force Majeure Event.* Except for payment obligations, neither Elo nor Customer shall be liable for its failure to perform its obligations under this Agreement due to events beyond its reasonable control including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with any Applicable Law (whether valid or invalid) of any governmental body. If either party is affected by any such force majeure event, the party so affected will take reasonable steps to mitigate the effect on the other party.
- f. *Notices.* Any notice required or permitted to be given hereunder will be given in writing by personal delivery, by e-mail (with confirmation of delivery) or by world-recognized courier delivery as follows:
 - If to Customer: At the email address(es) for the then current Administrator(s) for the account, and the Bill To address designated on the Order Form.

 - If to Elo: Elo Touch Solutions, Inc.
670 N. McCarthy Blvd.
Milpitas, CA 95035
Attention: General Counsel
generalcounsel@elotouch.com
- g. *Governing Law, Jurisdiction, and Claims.* This Agreement and each Order Form are governed by and are made under the laws of the State of California, U.S.A. The parties acknowledge that the Uniform Computer Information Transaction Act (or any statutory implementation of it) and the United Nations Convention on the International Sale of Goods and/or standard conflict of law rules applicable in Customer’s country of origin will not apply with respect to this Agreement or the Services. Subject to the last sentence of this section, any claim, dispute, or controversy arising out of or relating to this Agreement or the Services will be resolved by arbitration in accordance with the provisions of the commercial or business rules of the American Arbitration Association (AAA). Such arbitration will be held in Santa Clara County, California. Notwithstanding the foregoing, a party may seek preliminary judicial relief (such as a preliminary injunction) from the state and federal courts located in Santa Clara County, California if, in such party’s judgment, such action is necessary to avoid irreparable damage, and such courts will have exclusive jurisdiction and venue over all matters relating to such preliminary relief.

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Schedule I

PERSONAL DATA PROCESSING TERMS AND CONDITIONS

If Customer is located in the EU, EEA or Switzerland, the following terms shall apply: (i) Elo will process Customer's Personal Data in accordance with Customer's instructions, which will include processing as necessary to provide the Services contracted for or requested by Customer through use of the Site; (ii) Customer expressly delegates Elo the discretion to determine the means by which Customer's Personal Data will be processed to provide the Services; (iii) to the extent Customer is submitting the Personal Data of a third party, Customer is solely responsible for obtaining consent to the use of such Personal Data by Elo in accordance with the terms set forth in this Agreement and the Elo Privacy Policy; (iv) except as set forth in this Agreement and in the Privacy Policy, Elo will maintain Customer's Personal Data as confidential and will ensure that any subcontractors engaged by Elo who have access to or receive Customer's Personal Data (our "Subcontractors") will also keep Customer's Personal Data confidential on terms substantially equivalent to those set forth herein; (v) Elo will utilize the measures set forth in Section 3(b) of the Agreement for the protection of Customer's Personal Data; (vi) Elo will comply with any request by Customer to access, modify, update or delete Customer's Personal Data as set forth in the Privacy Policy; (vii) Elo will ensure that any transfers of Customer's Personal Data to any jurisdiction not offering "adequate protection" as defined by the European Commission (or any successor) will be in compliance with applicable EU Data Protection Law (including the Privacy Shield Principles); (viii) should Elo become aware of any unauthorized or accidental access, processing, deletion, loss, or any form of unlawful processing of the Personal Data, Customer will be notified without undue delay and otherwise in compliance with applicable EU Data Protection Law; (ix) Customer hereby authorizes Elo to continue to use the Elo Subcontractors for the provision of the Services as of the Effective Date of this Agreement, a list of which will be provided to Customer upon request; (x) Customer may object to any Elo Subcontractor, however, where the Services cannot be provided without the services of such Subcontractor, Elo may terminate this Agreement in response to such objection; (xi) Elo will be responsible for the compliance by such Subcontractors with this Agreement, and, to the extent required by EU Data Protection Law, with EU Data Protection Law; and finally (xii) at Customer's expense, Elo will provide Customer with reasonable assistance in responding to any requests, investigations, audits, or the like as required under EU Data Protection Law.

Schedule II

EVALUATION TERMS AND CONDITIONS

If Customer subscribes for an Evaluation, Elo will make certain the Service is available to Customer on a limited trial basis free of charge until the earlier of the following occurs: (i) the end of the Evaluation period for which Customer subscribed to use the Service or any portion thereof, which will be forty-five (45) days from Customer's first Account activation, unless otherwise agreed by Elo in writing (the "Evaluation Term"); or the start date of any Subscription Term for Subscriptions purchased by Customer. Additional information, terms, and conditions may be required in order to be admitted to an Evaluation, as may be designated on the Site. Any such additional information, terms, or conditions are incorporated into this Agreement by reference and the Evaluation and use of the Service is conditioned upon Customer's compliance with the terms thereof, this Agreement, and the accuracy of any information provided by Customer during such registration. Customer must designate an Authorized Elo Device on the Site within thirty (30) days following the creation of an Account. If Customer participates in an Evaluation that enables Customer to use the Service without charge, Customer must discontinue any usage of the Service and return the Elo Device to Elo prior to the end of the Evaluation Term in order to avoid incurring any charges for Customer's continued use of the Service. If the Elo Device is not returned to Elo upon the expiration of the Evaluation Term, Elo may charge Customer for the Elo Device as set forth in the applicable Order Form, or other similar documentation. Customer may provide Elo feedback, enhancement, ideas, or suggestions for improvement of the Service, the Elo Device or Elo's other product offerings, and Customer hereby confirms that Elo will have the unrestricted and irrevocable right and license but not an obligation to use such feedback, including the right to modify it or incorporate it in its Services, products, or offerings. Except as explicitly provided in this Schedule II, Customer's Evaluation of the Service and/or the Elo Device is subject to the use rights and restrictions set forth in this Agreement. **ANY DATA CUSTOMER ENTERS INTO THE SERVICE AND ANY CUSTOMIZATION MADE TO THE SERVICE BY OR FOR CUSTOMER'S USE DURING THE EVALUATION TERM WILL NOT BE RETAINED BY ELO AND MAY BE LOST, UNLESS CUSTOMER BUYS A SUBSCRIPTION TO THE SAME SERVICE BEFORE THE END OF SUCH EVALUATION TERM. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, DURING THE EVALUATION TERM, THE SERVICE AND ELO DEVICE ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY. ELO MAY TERMINATE ANY EVALUATION TERM OR DENY A REQUEST TO PURCHASE A SUBSCRIPTION.**

Elo may elect to invite Customer to participate in the Pre-Release Services at no additional charge. Customer may elect to accept or decline such invitation at your Customer's discretion. Pre-Release Services are designated for Evaluations only, are not intended for commercial use or live production environments, are not supported and may be subject to additional terms. Unless otherwise agreed by Elo in writing, the Pre-Release Service will terminate forty-five (45) days following the Evaluation Term's start date. Elo may discontinue any Pre-Release Service at any time in its sole discretion and may elect not to make it available for commercial use. Customer acknowledges that any Pre-Release Service includes pre-production code that has not been fully tested, may contain bugs, faults, errors, and defects, and is provided for Evaluation only. Elo is not obligated to deliver any enhanced functionality to the Services or to its hardware products and Customer acknowledges that Customer's Subscription(s) to the Service is not contingent on the delivery or commercialization of any future functionality or features. Elo will have no liability for any damages arising out of or in connection with Customer's use of a Pre-Release Service.