



## **Elo Access™ Master Services Subscription Agreement**

Welcome to Elo Access, a cloud-based, software-as-a-service (“SaaS”) screening system from Elo Touch Solutions, Inc. (“Elo”) available for Elo customers with an active EloView® (defined below) account. This Master Services Subscription Agreement governs the subscription(s) to access and use the Elo Access SaaS (“Elo Access SaaS” or “Elo Access”) through the Site (defined below) and any Evaluations (defined below) thereof. 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 may be updated from time to time, set forth in **Schedule V**, attached hereto and incorporated herein.
- 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, and posted at [https://docs.elotouch.com/Elo\\_Access\\_MSSA.pdf](https://docs.elotouch.com/Elo_Access_MSSA.pdf).
- h. **“Applicable Law”** means any applicable federal, state, or local laws or other country’s applicable laws, rules, or regulations including, without limitation, any Data Privacy Laws.
- 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, Personal Data, End User Information, and communications with others uploaded by Customer, its Users, or its End Users to the Service, Site, Account, or any User Account, or transmitted by Customer, its Users, or its End 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 Law”** means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other state, country, or territory.
- 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. **“EEA”** means the European Economic Area, a free-trade zone created in 1994, composed of the states of the European Union together with Iceland, Norway, and Liechtenstein.
- q. **“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.
- r. **“Elo Device”** means an Elo hardware device or product of any kind, including monitors, mobile devices, and all-in-one computers.
- s. **“End Users”** means Customer’s customers and employees who are natural persons making use of the Service and/or Entity End Customers’ customers and employees who are natural persons. The term “End Users” is synonymous with “Data Subjects” as defined in the GDPR. “End Users” must be 18 years of age for use of the Services.
- t. **“End User Information”** means any End User’s Personal Data or other information from any End User. The term “End User Information” is synonymous with “Personal Data” as defined in the GDPR.
- u. **“Entity End Customers”** Customer’s customers that are legal entities and not natural persons making use of the Service; Entity End Customers are not natural persons. An Entity End Customer for purposes of the Services here, will typically be a “Controller” as defined in the GDPR.
- v. **“Elo Access Standard”** means the standard Elo Access Mode that includes the survey feature for screening purposes.
- w. **“Elo Access Standard Additional Terms”** means the additional terms and conditions applicable to Elo Access Standard, as may be updated from time to time, set forth in **Schedule III**, attached hereto and incorporated herein.
- x. **“Elo Access Modes”** means the current Subscription options offered by Elo include the Elo Access Standard and Elo Access Premium. Subscriptions to the Service will be either Elo Access Standard Subscriptions or Elo Access Premium Subscriptions. F
- y. **“Elo Access Premium”** means the advanced Elo Access Mode that includes the survey feature included in Elo Access Standard plus one or more of the following features for screening purposes: temperature capture; facemask detection; and/or facial recognition.
- z. **“Elo Access Premium Additional Terms”** means the additional terms and conditions applicable to Elo Access Standard, as may be updated from time to time, set forth in **Schedule IV**, attached hereto and incorporated herein.
- aa. **“EloView”** means Elo’s cloud-based, device content deployment and device management SaaS including the underlying software and related applications offered under the EloView MSSA and ordered or subscribed to by Customer.
- bb. **“EloView MSSA”** means the EloView Master Services Subscription Agreement by and between Elo and Customer that governs Customer’s access and use of EloView.

- cc. **“EU Data Protection Laws”** means the General Data Protection Regulation 2016/679 and any applicable Member State data protection laws, regulations and secondary legislation, in each case as amended or updated from time to time;
- dd. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act (Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009)
- ee. **“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.
- ff. **“Online Order”** means any order for Subscriptions submitted at <https://manage.eloview.com/> which, if applicable, will include payment by an accepted credit card.
- gg. **“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 Elo Access Mode(s) of the Subscriptions, the applicable Territory, and the Fees (if any) 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.
- hh. **“Permitted Sensitive Data”** means the following Sensitive Data: (i) biometric data used to identify natural persons who are eighteen (18) years old or older and (ii) the body temperatures of natural persons who are eighteen (18) years old or older.
- ii. **“Personal Data”** shall mean the personal data defined by and protected under the applicable Data Privacy Laws.
- jj. **“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.
- kk. **“Privacy Policy”** means the Elo Privacy Policy, as it may be updated from time to time, and posted at [www.elotouch.com/privacy-policy](http://www.elotouch.com/privacy-policy).
- ll. **“Prohibited Sensitive Data”** means any Sensitive Data that is not Permitted Sensitive Data.
- mm. **“Service”** or **“Services”** means the Elo Access SaaS, 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.
- nn. **“Site”** means the website Elo uses to offer and administer the Services, currently being [www.eloaccess.eloview.com](http://www.eloaccess.eloview.com) and any other successor or connected sites.
- oo. **“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.
- pp. **“Special Category Personal Data”** means 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 natural person. “Special Category Personal Data” shall be interpreted in conformity with the corresponding Data Privacy law definition of the applicable jurisdiction, including the GDPR for EU End Users and the CCPA for California resident End Users.
- qq. **“Sensitive Data”** means any (i) personally identifiable information such as credit card data, national identity number (“PII”); (ii) any patient, medical, or other health-related information, including information regulated by HIPAA 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); (iv)

any Personal Data of natural persons under the age of eighteen (18) years; or (v) Special Category Personal Data.

- rr. **"Storage Limit"** means the maximum amount of Content Customer may store in its Account while using the Service.
- ss. **"Subscription"** means a subscription to use or access the Service per Authorized Elo Device, as set forth in the applicable Order Form. Each Subscription will be either an Elo Access Standard Subscription or an Elo Access Premium Subscription.
- tt. **"Subscription Term"** means the term of Customer's Subscription(s) to access the Service and will be coterminous align with the Customer's EloView subscription terms, unless otherwise designated in the Order Form.
- uu. **"Territory"** means the applicable 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 Elo Access Standard Additional Terms or the Elo Access Premium Additional Terms, as applicable.
- vv. **"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.
- ww. **"US Biometric Identifier Laws"** means enacted federal and state laws governing biometric data collection and use in the United States or in specific states in the United States including without limitation, Illinois' Biometric Information Privacy Act, 740 ILCS 14/1 ("BIPA"); Texas' Capture or Use of Biometric Identifier Act, Texas Bus.&Com. Code § 503 ("CUBI"); and Washington's Biometric Identifiers Act, RCW § 19.375.
- xx. **"User"** means the same as Account User."
- yy. **"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 equal to the number of EloView subscriptions or for the number of Subscriptions set forth in the applicable Order Form; (ii) the Service may be used to, among other features, collect and manage Data; and (iii) additional Subscriptions may be added to the Account by entering into an additional Order Form(s) with Elo; however, in no event, shall Customer have Subscriptions greater than the number Customer's active EloView subscriptions. The Services must be used with Authorized Elo Devices currently authorized for Customer to access and use EloView. 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 collect, store, or transmit any infringing, libelous, malicious, or otherwise unlawful or tortious content, any Prohibited Sensitive Data, or any content in violation of any third-party privacy rights, this Agreement, or any Applicable Laws; (ii) use the Service or any part thereof in violation of Applicable Laws including without limitation all Data Privacy Laws or Documentation; (iii) modify the Service or Software or make derivative works based upon the Service or Software; (iv) use the Service or Software in connection with any weapons, weapon systems, or other technologies or products whose purpose is to cause or facilitate injury to people; (v) interfere with or disrupt the integrity of the Services or any third-party data stored therein, (vi) attempt to gain unauthorized access to the Services or related systems or networks; (vii) use the Services to develop any competing product or service, create benchmark data, reverse engineer, disassemble, reverse compile or decompile the Services or Software, in whole in part; (viii) attempt to derive source code of the Service or Software or otherwise copy the Software or the Service or any part, feature, function, or user interface of the Service or Software; (ix) share an Administrator's or Account User's password with any third party; (x) exceed the number of Customer's active EloView subscriptions or, if applicable, the number of

Subscriptions set forth in the Order Form; (xi) permit direct or indirect access to or use of any Service in a way that circumvents a usage limit hereunder; (xii) make any Service available to, or use any Service for the benefit of any third party other than Customer or the Account Users; (xiii) 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 (xiv) store more than the applicable Storage Limit while for the applicable Elo Access Mode 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](http://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, Elo Access Standard Additional Terms, Elo Access Premium 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 collects, stores, or transmits using the Site and the Service; (ii) use the Service only in accordance with the applicable Documentation and all Applicable Laws; (iii) be responsible for all Account Users', Entity End Users, and End Users' compliance with this Agreement, the Privacy Policy, and the Acceptable Use Policy; and (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 Administrator will be responsible for uploading Content (except for Content uploaded via End Users use of the Service) 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 or Customer's customers intend to collect any End User Information, Customer will be the controller of such End User Information, including without limitation, any Personal Data, and it is Customer's sole responsibility to comply with all Applicable Laws, including, without limitation, all Data Privacy Laws, with respect to the collection of such End User Information. It is Customer's responsibility to obtain any and all necessary permissions or consents under all 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 terms of this Agreement and the Acceptable Use Policy and is satisfactory for use with the Service, and Elo may suspend use of the Service pending any investigation of a violation of the terms of this Agreement and the Acceptable Use Policy and/or remove any Content it deems in violation thereof.

g. *Sensitive Data/HIPPA.*

(i) *Sensitive Data.* Elo Access Standard Subscriptions must not be used to transmit any Sensitive Data to the Service. Customer will not use Elo Access Standard Subscriptions to upload Sensitive Data to the Service or to collect Sensitive Data in the Service. Elo Access Premium Subscriptions may be used to transmit any Permitted Sensitive Data to the Service but must not be used to transmit any Prohibited Sensitive Data to the Service. Customer may use Elo Access Premium Subscriptions to upload Permitted Sensitive Data to the Service or to collect Permitted Sensitive Data in the Service. Customer will not use Elo Access Premium Subscriptions to upload Prohibited Sensitive Data to the Service or to collect Prohibited Sensitive Data in the Service. Elo has no liability for any Sensitive Data.

(ii) *HIPPA.* The 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.

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 (collectively, "High-Risk Application"), Customer acknowledges and agrees that Elo Devices and Services are designed and manufactured under normal industrial conditions, which may not satisfy the requirements applicable to products manufactured for certain High-Risk Applications. It is the sole responsibility of persons contemplating High Risk Application of the Elo Devices or Services to comply with all Applicable Laws, including the U.S. Federal Food, Drug and Cosmetic Act and regulations of the Food and Drug Administration or other similar laws, and Elo expressly disclaims any express or implied warranty of fitness for High-Risk Application.

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, non-personal 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 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 Content 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 a state, province, or country subject to Data Privacy Laws, 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 Service 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 Elo Access 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 or End User Information 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 using Customer’s EloView administrator account’s login credentials. The Administrator Account 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. Customer must create Use Accounts in compliance with all Applicable Laws and Customer's policies provided that such Account Users will have to access End User Information obtained from End Users' use of the Service. 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 Elo Access Standard 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.* Unless Elo, at its sole discretion, grants Customer access to use the Service free of charge, 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 acknowledge 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 acknowledge 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 9 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, Elo Access Standard, 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. **Data Privacy.**

- a. The use of or Processing of Personal Data under this Services Agreement shall be governed by the terms of the Data Processing Addendum (“DPA”), attached hereto as Schedule V. Both Parties shall control and process all Personal Data in compliance with the applicable laws and regulations. The Parties acknowledge and agree that with respect to the laws of the European Economic Area (“EEA,” which for purposes of this Agreement shall be deemed to include the United Kingdom, regardless of its status as a Member State of the European Union) or Switzerland, their respective obligations will depend in part on their respective roles as a Data Processor or Data Controller as defined in the GDPR. Where Personal Data originates in the EEA or Switzerland and Vendor is acting as a Data Processor, the Parties will comply with the DPA. If, in connection with the Parties’ respective activities under the Services Agreement, it is necessary or desirable to transfer Personal Data from the EEA or Switzerland to a third country (as such term is used in the GDPR), the Parties shall ensure a lawful basis for such transfer exists prior to such transfer. In the event the Parties determine the lawful basis for the transfer shall be the applicable European Commission’s Standard Contractual Clauses for transfers between Data Controllers (the “Standard Clauses”), the Parties shall work in good faith to abide by the Standard Clauses.
- b. It is Customer’s responsibility to obtain any and all consents required by all Applicable Laws from End Users regarding End User Information provided by End Users to Customer, including, without limitation, the End User Information uploaded to the Service by End Users while using the Service and/or an Elo Device. It is Customer’s responsibility to notify the End Users regarding Customer’s use of any Personal Data it obtains from End Users in accordance with all Applicable Laws. Personal Data 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 DPA and Elo’s Terms of Use. 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.
- c. 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 or subprocessor 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, any Account User's, or any End User's use of the Service, including uploading Content; Customer's, Account Users', or End Users' breach or other violation of any Applicable Laws or 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 OR SERVICES (INCLUDING ANY DOWNLOADS OR ANY LOSS OF DATA OR CONTENT 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. ELO DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICE OR SITE IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT THE PREDICTION ACCURACY OF MODELS, ALGORITHMS, OR OTHER COMPONENTS OF ANY AI-BASED IMAGE RECOGNITION TECHNOLOGY CAN NEVER BE GUARANTEED. CUSTOMER'S USE OR RELIANCE UPON THE OUTCOMES OR CALCULATIONS PROVIDED BY THE SERVICE IS STRICTLY AT CUSTOMER'S OWN RISK. IN NO EVENT SHALL ELO OR ITS LICENSORS, SUPPLIERS OR AGENTS HAVE ANY LIABILITY WHATSOEVER, WHETHER

EXPRESS, IMPLIED OR STATUTORY, ARISING FROM CUSTOMER'S USE OR RELIANCE ON ANY OUTCOMES PRESENTED OR OTHERWISE CALCULATED BY THE SERVICE AND THE PREDICTION ACCURACY OF ANY MODELS, ALGORITHMS, MODELS, OR OTHER OFFERINGS IN THE SERVICE. 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 OR SERVICES 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. TO THE EXTENT SUCH DISCLAIMER CONFLICTS WITH APPLICABLE LAW, THE SCOPE AND DURATION OF ANY APPLICABLE WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH APPLICABLE LAW.

#### 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 6 (*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, and Elo's current Privacy Policy 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 or a contractor to a United States Government Agency, 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 or DFARS 227.7202. Computer software and technical data are provided as "restricted computer software" and "limited rights data" under 48 CFR 52.227.14 Alternative I. No license of any kind is granted in the case of acquisitions which contain or are subject to the clause FAR 52-227.19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUNE 1987) or DFARS 252.227-7013 RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

(OCT 1988) or any other clause which purports to grant to the government rights greater than, or additional to those, set forth in this Agreement.

- 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 Consolidated Screening List, Table of Denial Orders, the Entity List, the List of Specially Designated Nationals, or any person to be engaged in activities related to proliferation of nuclear, chemical or biological weapons, without first obtaining any required licenses or authorizations and prior written authorization from Elo. 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.  
1755 N. Collins Blvd, Suite 525  
Richardson, TX 75080  
Attn: General Counsel  
[GeneralCounsel@elotouch.com](mailto:GeneralCounsel@elotouch.com)

With a copy to:

Elo Touch Solutions, Inc.  
670 N. McCarthy Blvd, Suite 100  
Milpitas, CA 95035  
Attn: President

- 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.

## Schedule I

### 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.



## Schedule II

### ELO ACCESS STANDARD ADDITIONAL TERMS

The following additional terms and conditions are applicable to the Elo Access Standard Subscriptions and may be updated from time to time.

#### **Support**

Elo will make commercially reasonable efforts to make Support available as follows:

- U.S. and Canada Support
  - Email: [support@eloview.com](mailto:support@eloview.com)
  - Phone: 1-844-435-6832 or 1-865-329-7869 from 8:00 am to 5:00 pm EST
- Europe Support
  - Email: [eloviewsupportEU@elotouch.com](mailto:eloviewsupportEU@elotouch.com)
  - Phone: +32 (0)16704545 from 8:00 am to 5:00 pm CET
- Japan Support
  - Email: [tpstech@tps-support.com](mailto:tpstech@tps-support.com)
  - Phone: +81 3-5464-5835 from 8:00 am to 5:00 pm JST

\*Exceptions: (i) planned downtime; and (ii) any Services or support unavailability caused by a Force Majeure Event. Customer must provide Elo with sufficient information in order for any error encountered by Customer to be replicated.

#### **Storage Limit**

1GB per Account

#### **Authorized Countries for Territory**

Americas:

- USA, Canada
- Puerto Rico
- Mexico, Peru

EMEA:

- Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Italy, Netherlands, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Turkey, UK

Asia Pacific:

- Japan, South Korea
- Australia, New Zealand

Please contact Elo Sales for inquiries about countries not listed. It is the Customer's sole responsibility to comply with all Applicable Laws, including without limitation, all Data Privacy Laws, in Customer's use of the Service and the collection and use of all End User Information, including without limitation, all Personal Data.

#### **Licenses**

As provided in the Agreement, use of the Service and Software are subject to the Elo Terms of Sale including, without limitation, subsection (f) of the "Software and Services" section of the Elo Terms of Sale regarding a portion of the Software containing or consisting of open source software. Please contact Elo Support for the terms of the specific licenses under which such open source software is distributed and for any other third-party license terms to Customer's use of the Service.

## Schedule III

### ELO ACCESS PREMIUM ADDITIONAL TERMS

The following additional terms and conditions are applicable to the Elo Access Premium Subscriptions and may be updated from time to time.

#### **Support**

Elo will make commercially reasonable efforts to make Support available as follows:

- U.S. and Canada Support
  - Email: [support@eloview.com](mailto:support@eloview.com)
  - Phone: 1-844-435-6832 or 1-865-329-7869 from 8:00 am to 5:00 pm EST
- Europe Support
  - Email: [eloviewsupportEU@elotouch.com](mailto:eloviewsupportEU@elotouch.com)
  - Phone: +32 (0)16704545 from 8:00 am to 5:00 pm CET

\*Exceptions: (i) planned downtime; and (ii) any Services or support unavailability caused by a Force Majeure Event. Customer must provide Elo with sufficient information in order for any error encountered by Customer to be replicated.

#### **Storage Limit**

1GB per Account

#### **Authorized Countries for Territory**

Americas:

- USA, Canada
- Puerto Rico
- Mexico, Peru

EMEA:

- Austria, Belgium, Czech Republic, Denmark, France, Germany, Hungary, Italy, Netherlands, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Turkey, UK

Asia Pacific:

- Japan, South Korea, Australia, New Zealand

In addition to Section 14.d. of the Agreement, Customer shall not on its own, or permit or assist any person or entity to export, re-export, transfer in-country or provide access to the Service to any country, person or entity whose principal place of business is located in the Balkans, Belarus, Burundi, Central African Republic, China, Congo, Cuba, Darfur, Iran, Iraq, Lebanon, Libya, Nicaragua, North Korea, Russia, Somalia, Sudan, Syria, Ukraine, Venezuela, Vietnam, Yemen or Zimbabwe, without prior written authorization from Elo and from the applicable government authority to the extent required by Export Regulations.

Please contact Elo Sales for inquiries about countries not listed. It is the Customer's sole responsibility to comply with all Applicable Laws, including without limitation, all Data Privacy Laws, in Customer's use of the Service and the collection and use of all End User Information, including without limitation, all Personal Data.

#### **Licenses**

As provided in the Agreement, use of the Service and Software are subject to the Elo Terms of Sale including, without limitation, subsection (f) of the "Software and Services" section of the Elo Terms of Sale regarding a portion of the Software containing or consisting of open source software. Please contact Elo Support for the terms of the specific licenses under which such open source software is distributed and for any other third-party license terms to Customer's use of the Service.

## SCHEDULE IV

### **Acceptable Use Policy**

Customer will comply with the following "Acceptable Use Policy" at all times while using the Service. Customer will not:

- violate the terms of this Agreement, the Elo Privacy Policy, or the legal rights (including the rights of publicity and privacy) of others;
- use the service for gambling (where prohibited), adult entertainment, or other illegal or potentially offensive business;
- upload any material depicting or promoting sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age or that could otherwise give rise to any civil or criminal liability under applicable laws;
- impersonate a person, misappropriate any other person's identity, or misrepresent Customer's identity or affiliation with any person or organization;
- conduct itself in a vulgar, offensive, defamatory, harassing, or objectionable manner;
- copy, reproduce, create derivative works of, or distribute any Services, copyrights, or Elo Trademarks;
- infringe on any patent, trademark, trade secret, copyright, or other intellectual property rights of any other person or infringe a copyright in direct violation of the Digital Millennium Copyright Act ("DMCA") or any similar legislation;
- remove or modify any copyright, trademark, or other proprietary rights notice on the Service or on any materials printed or copied off of the Service;
- resell, import, or export, directly or indirectly, the Software(s) associated with the Service;
- create a risk to public safety or health in general, or to any individual's health and safety;

Customer will not use the Services to:

- engage in any activity that interferes with or disrupts the Services or Software;
- upload or otherwise send or transmit any material that contains viruses, or any other harmful computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment associated with the Services;
- reverse engineer, attempt to access or access any source code, algorithms, methods, or techniques used in the Software or Services;
- interfere with the servers or networks connected to the Service or violate any of the procedures, policies, or regulations of networks connected to the Service;
- attempt to gain unauthorized access to the Service, User Accounts, computer systems or networks connected to the Service through hacking, password mining, or any other means;
- use the Services to create unsolicited email and/or SPAM (including any conduct that would violate the CAN-SPAM Act of 2003 or similar legislation);
- record, process, or mine information about other users;
- use any robot, spider, service search/retrieval application, or other automated device, process, or means to access, retrieve, scrape, or index the Service or any content of the Service;
- modify, adapt, or hack the Service or modify another website so as to falsely imply that it is associated with the Site or the Service;
- take any action that imposes, or may impose in Elo's sole determination, an unreasonable or disproportionately large load on Elo's technology infrastructure; or use the Services to facilitate IRC, Egg Drops, BNC, or IRC bots, proxies, game servers, or any online gambling services.

## SCHEDULE V

### DATA PROTECTION ADDENDUM

This Data Protection Addendum ("**Addendum**" or "**DPA**") is incorporated into, and is subject to the terms and conditions of, the Master Services Subscription Agreement ("**Services Agreement**") between: (i) **Elo Touch Solutions, Inc.** ("**Vendor**" or "**Processor**") acting on its own behalf; and (ii) **Customer** ("**Customer**" or "**Controller**") acting on its own behalf and as agent for each Customer Affiliate.

The terms used in this Addendum shall have the meanings set forth in this Addendum. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Services Agreement. Except as modified below, the terms of the Services Agreement shall remain in full force and effect.

In consideration of the mutual obligations set out herein, the Parties hereby agree the terms and conditions set out below shall be added as an Addendum to the Services Agreement. Except where the context requires otherwise, references in this Addendum to the Services Agreement are to the Services Agreement as amended by, and including, this Addendum.

#### 1. Definitions

##### 1.1 **In this Addendum, the following terms shall have the meanings set out below and analogous terms shall be construed accordingly:**

- 1.1.1 "**Applicable Law**" means all laws relating to data protection, privacy, the use of information relating to individuals, and/or the information rights of individuals including but not limited to, any laws in force in any relevant jurisdiction which implement the EU General Data Protection Regulation 2016/679 ("**GDPR**"), the Data Protection Act 2018 and any regulations made under those acts or regulations, in each case in any relevant jurisdiction(s) and any equivalent law or regulation in any other relevant jurisdiction(s), as amended or replaced from time to time.
- 1.1.2 "**Customer Affiliate**" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Customer, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise;
- 1.1.3 "**Customer Group Member**" means Customer or any Customer Affiliate;
- 1.1.4 "**Customer Personal Data**" means any Personal Data Processed by a Contracted Processor on behalf of a Customer Group Member pursuant to or in connection with the Services Agreement;
- 1.1.5 "**Contracted Processor**" means an authorized Vendor or a Subprocessor;
- 1.1.6 "**Data Privacy Law**" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;

- 1.1.7 **"EEA"** means the European Economic Area, including the United Kingdom;
- 1.1.8 **"EU Data Protection Law"** means the General Data Protection Regulation 2016/679 and any applicable Member State data protection laws, regulations and secondary legislation, in each case as amended or updated from time to time;
- 1.1.9 **"GDPR"** means EU General Data Protection Regulation 2016/679;
- 1.1.10 **"Services"** means the services and other activities to be supplied to or carried out by or on behalf of Vendor for Customer Group Members pursuant to the Services Agreement;
- 1.1.11 **"Standard Contractual Clauses"** means the contractual clauses set out in Annex 2, amended as indicated (in square brackets and italics) in that Annex and under section 13.4;
- 1.1.12 **"Subprocessor"** means any person (including any third party and any Vendor Affiliate, but excluding an employee of Vendor or any of its sub-contractors) appointed by or on behalf of Vendor to Process Personal Data on behalf of any Customer Group Member in connection with the Services Agreement; and
- 1.2 The terms, "Commission", "Controller", "Data Subject", "Member State", "Personal Data", "Personal Data Breach", "Processing" and "Supervisory Authority" shall have the same meaning as in the GDPR, and their analogous terms shall be construed accordingly.
- 1.3 Both Parties will comply with all pertinent requirements of the Data Privacy Law.
- 1.4 The Parties acknowledge for the purposes of the Applicable Laws, Customer is the data Controller and Vendor is the data Processor. The Services Agreement sets out the scope, nature and purpose of processing by Vendor, the duration of the processing, the types of Customer Personal Data to be processed under the Services Agreement, and categories of Data Subject.
- 1.5 The word "include" shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.
- 1.6 This Addendum is hereby incorporated into and forms part of the Services Agreement.
- 1.7 In the event the definitions in this Addendum are inconsistent with the definitions given similar terms or concepts under Data Privacy Law, then the definition given any such similar term or concept under that applicable Data Privacy Law shall prevail. In the event and to the extent of any conflict between the terms of the Services Agreement and this Addendum, the terms of this Addendum will prevail. In the event and to the extent of any conflict between the terms of this Addendum and the Standard Contractual Clauses, the terms of the Standard Contractual Clauses shall prevail.
- 1.8 Except as expressly amended herein, the terms of the Services Agreement will remain in full force and effect.
- 1.9 If this Addendum is drafted in English and a foreign language, in the case of differences between the text in English and the text in the foreign language, the text in English shall prevail.
- 2. Processing of Customer Personal Data
  - 2.1 Both Parties shall comply with all applicable Data Privacy Law in the Processing of Customer Personal Data.
  - 2.2 Vendor shall not Process Customer Personal Data other than on the Customer's documented instructions unless Processing is required by Applicable Law, in which case Vendor shall (to the extent permitted by

Applicable Law) inform the Customer of any such legal requirement before the relevant Processing of that Personal Data.

2.3 Each Customer Group Member:

2.3.1 instructs Vendor and authorises Vendor to instruct each Subprocessor to:

2.3.1.1 Process Customer Personal Data; and

2.3.1.2 in particular, transfer Customer Personal Data to any country or territory,

as reasonably necessary for the provision of the Services and consistent with the Services Agreement; and

2.3.2 warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in section 2.3 on behalf of the Customer or the relevant Customer Affiliate.

2.4 Annex 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of the Customer Personal Data as required by article 28(3) of the GDPR and other equivalent requirements of other Data Privacy Laws. Customer may make reasonable amendments to Annex 1 after providing reasonably given, prior written notice to Vendor as Customer reasonably considers necessary to meet those requirements. Nothing in Annex 1 (including as amended pursuant to this section 2.4) confers any right or imposes any obligation on any Party to this Addendum.

3. Vendor Personnel

Vendor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who has access to the Customer Personal Data, ensuring in each case that access is limited to those individuals who need to know / access the relevant Customer Personal Data, as necessary for the purposes of the Services Agreement, ensuring such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4. Security

4.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Vendor shall in relation to the Customer Personal Data implement appropriate and reasonable technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

5. Subprocessing

5.1 Each Customer Group Member authorises Vendor to appoint Subprocessors in accordance with this section 5 and any restrictions in the Services Agreement.

5.2 Vendor may continue to use those Subprocessors already engaged by Vendor as at the date of this Addendum.

5.3 Vendor shall give Customer reasonable, prior written notice of the appointment of new Subprocessors, including information concerning the Processing to be undertaken by the Subprocessor. Any objection to a Subprocessor by Customer must be provided in writing to Vendor within 10 days of Customer's receipt such notice.

- 5.4 Vendor will take reasonable steps to select and retain Subprocessors who maintain appropriate security measures to protect Personal Data in a consistent manner to this Addendum and Applicable Laws.
- 5.5 Prior to disclosing Personal Data Processed under this Addendum to a Subprocessor, Vendor will take reasonable measures to execute and have in place with such third party, a written agreement including obligations at least as broad in scope as those in this Addendum and with requirements of Applicable Laws.
6. Data Subject Rights
- 6.1 Taking into account the nature of the Processing, Vendor shall take reasonable steps to assist each relevant Customer Group Member, at Customer's cost and as appropriate, with the fulfilment of the Customer Group Members' obligations to respond to requests to exercise Data Subject rights under applicable Data Privacy Law.
- 6.2 Vendor shall make reasonable efforts to promptly notify Customer upon becoming aware of a valid Personal Data access request from a Data Subject and take reasonable measures to coordinate with the Customer to respond to such Data Subject requests.
7. Personal Data Breach
- 7.1 Vendor shall make reasonable efforts to promptly notify Customer upon becoming aware of a known Personal Data Breach affecting Customer Personal Data.
- 7.2 Vendor shall co-operate with Customer and each Customer Group Member and take reasonable commercial steps to assist in the with each such known Personal Data Breach.
8. Data Protection Impact Assessment and Prior Consultation
- 8.1 Vendor shall provide reasonable assistance to Customer with necessary data protection impact assessments and consultations with Supervising Authorities or other competent data privacy authorities related to the specific Processing activities pursuant to the Services Agreement.
9. Deletion or return of Customer Personal Data
- 9.1 Subject to section 9.2, at the written direction of the Customer, Vendor will delete or return Customer Personal Data and all copies thereof to Customer on termination of the Services Agreement; provided that if Applicable Law requires Vendor to store a copy of the Customer Personal Data, Vendor shall store the Customer Personal Data strictly as required by Applicable Law and delete such upon the expiration of said legal obligation.
- 9.2 Vendor shall provide written certification to Customer that it has fully complied with this section within a commercially reasonable time from the receipt of such request from the Customer.
10. Audit rights
- 10.1 Once each calendar year, and upon Customer's reasonably given, prior written request, Vendor shall make available relevant information demonstrating compliance with this Addendum, and may allow for audits by a direct representative selected by Customer as it relates to the Processing of the Customer Personal Data by Vendor.
- 10.2 Customer or the relevant Customer Affiliate undertaking an audit shall give Vendor reasonable, prior written notice of any audit requested under section 10.1 and shall make (and ensure any auditors make) reasonable endeavors to not cause damage or disruption to the Vendor's or Contracted Processors' premises, equipment, personnel and business.. Neither Vendor nor a Contracted Processor need give access to its premises for the purposes of such an audit:

10.2.1 to any individual unless he or she produces evidence of identity and authority;

10.2.2 outside normal business hours on the relevant premises.

## 11. International Personal Data Transfers

11.1 As applicable and subject to the requirements of the GDPR, the Customer and each Customer Group Member (as "data exporter") and Vendor and each Contracted Processor (as "data importer"), shall enter into the Standard Contractual Clauses concerning any International Transfers of Personal Data ("International Transfers") from that Customer Group Member to Vendor or Contracted Processor.

11.2 The Standard Contractual Clauses shall be the legal mechanism upon which International Transfers of Personal Data from the EEA and Switzerland to third countries outside of the EEA and Switzerland are provided for, and shall come into effect, applying across all parties, to the Agreement upon execution of the Agreement. The EEA, for purposes of International Transfers pursuant to the Services Agreement, shall apply to the United Kingdom regardless of the outcome of Brexit.

## 12. General Terms

### *Governing law and jurisdiction*

12.1 Without prejudice to clauses 7 (Mediation and Jurisdiction) and 9 (Governing Law) of the Standard Contractual Clauses:

12.1.1 the Parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Services Agreement with respect to any disputes or claims arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and

12.1.2 this Addendum and all non-contractual or other obligations arising out of or in connection with it are governed by the laws of the country or territory stipulated for this purpose in the Services Agreement.

### *Order of precedence*

12.2 Subject to this section 12.2, with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the Parties, including the Services Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

### *Changes in Data Privacy Laws, etc.*

12.3 Customer may, by at least 30 (thirty) calendar days' reasonably given, prior written notice to Vendor, request amendments to this Addendum or to the pertinent Appendices of the Standard Contractual Clauses so required as a result of a change in, or decision of a competent authority under, an applicable Data Privacy Law, to allow for the Processing of Customer Personal Data or International Transfers of Personal Data to be made without breach of any such applicable Data Privacy Law.

12.4 Neither Customer nor Vendor shall require the consent or approval of any Customer Affiliate to amend this Addendum pursuant to this section or otherwise.



*Severance*

- 12.5 Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

## **ANNEX 1: DETAILS OF PROCESSING OF CUSTOMER PERSONAL DATA**

This Annex 1 includes certain details of the Processing of Customer Personal Data as required by Article 28(3) GDPR.

### *Subject matter and duration of the Processing of Customer Personal Data*

The subject matter and duration of the Processing of the Customer Personal Data are set out in the Services Agreement and this Addendum.

### *The nature and purpose of the Processing of Customer Personal Data*

The nature and purpose of the Processing of the Customer Personal Data are set out in the Services Agreement and this Addendum.

### *The types of Customer Personal Data to be Processed*

The types of Customer Personal Data are set out in the Services Agreement and this Addendum.

### *The categories of Data Subject to whom the Customer Personal Data relates*

Customer employees, clients, customers, or patrons.

## ANNEX 2: STANDARD CONTRACTUAL CLAUSES

*These Clauses are deemed to be amended from time to time, to the extent that they relate to an International Transfer of Personal Data subject to the Data Privacy Laws of a given country or territory, to reflect necessary changes made in accordance with those Data Privacy Laws (i) by the Commission to or of the equivalent contractual clauses approved by the Commission under EU Directive 95/46/EC or the GDPR; or (ii) by an equivalent competent authority to or of any equivalent contractual clauses approved by it or by a competent authority under another Data Privacy Law.).*

### Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Customer (the **data exporter**)

and

Elo Touch Solutions, inc. (the **data importer**)

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

#### Background

The data exporter has entered into a data processing addendum (“DPA”) with the data importer. Pursuant to the terms of the DPA, it is contemplated that services provided by the data importer will involve the transfer of personal data to data importer. Data importer is located in a country not ensuring an adequate level of data protection. To ensure compliance with Directive 95/46/EC and applicable data protection law, the controller agrees to the provision of such Services, including the processing of personal data incidental thereto, subject to the data importer’s execution of, and compliance with, the terms of these Clauses.

#### Clause 1

#### **Definitions**

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; [If these Clauses are governed by a law which extends the protection of data protection laws to corporate persons, the words “except that, if these Clauses govern a transfer of data relating to identified or identifiable corporate (as well as natural) persons, the definition of “personal data” is expanded to include those data” are added.]*

- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC; *[If these Clauses are not governed by the law of a Member State, the words "and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC" are deleted.]*
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## Clause 2

### **Details of the transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

## Clause 3

### **Third-party beneficiary clause**

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### Clause 4

##### **Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC; *[If these Clauses are not governed by the law of a Member State, the words "within the meaning of Directive 95/46/EC" are deleted.]*
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

#### Clause 5

##### **Obligations of the data importer**

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

#### *Clause 6*

#### ***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

*Clause 7*

**Mediation and jurisdiction**

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

*Clause 8*

**Cooperation with supervisory authorities**

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

*Clause 9*

**Governing Law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

*Clause 10*

**Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

## *Clause 11*

### ***Subprocessing***

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## *Clause 12*

### ***Obligation after the termination of personal data processing services***

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.



## **APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES**

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

### **Data exporter**

The data exporter is:

The Customer as defined in the Services Agreement.

### **Data importer**

The data importer is:

Elo Touch Solutions, Inc.

### **Data subjects**

The personal data transferred concern the following categories of data subjects:

Customer employees, clients, customers, or patrons.

### **Categories of data**

The personal data transferred concern the following categories of data:

Data exporter may submit special categories of data to the Vendor, the extent of which is determined and controlled by the data exporter in its sole discretion, and which is for the sake of clarity Personal Data with information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade-union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

### **Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data:

The types of Customer Personal Data are set out in the Services Agreement and this Addendum.

## **Processing operations**

The personal data transferred will be subject to the following basic processing activities:

The types of processing activities set out in the Services Agreement and this Addendum.

## **APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES**

**Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):**

1. **Governance and Compliance**

- a) Organisational security policies and standards.
- b) Appointment of DPO
- c) Accountability for ensuring technical and organizational compliance with policies

2. **Continuity**

- a) Appropriate disaster recovery plans are in place to counteract to ensure timely recovery of IT systems supporting the services provided to the data exporter, in case of a disaster.
- b) Testing of disaster recovery plans and updated regularly
- c) Maintenance of data integrity and availability through back up-copies, which are regularly tested

3. **Media Handling**

- a) Procedures for handling and storage of data
- b) Media is disposed of securely and safely when no longer required, using formal procedures.
- c) System documentation is protected against unauthorised access.

4. **Data Transfer**

- a) Data imported will be securely transferred and protected by the organisation to a commercially reasonable standard, using the operational, technical and legal tools available at the time.
- b) Standard Contractual Clauses and forthcoming additional protective measures will be included in data protection

5. **Access Control**

- a) Access control policies are implemented to prevent unauthorised access, in particular, to sensitive personal data.
- b) User access rights are reviewed on a reasonable basis to ensure allocation and use of privileges are controlled and restricted where necessary.

6. **Cryptographic control**

- a) All data at rest is encrypted. Certain data in-transit is encrypted on a routine basis.
- b) All information both at rest and in transit is encrypted regardless of risk associated. Note if data is marked as PII, PHI, Confidential or similarly classified, Data Loss Prevention measures will prevent such data from being transmitted unless there is a legitimate and authorized business reason for transmission, in which case additional encryption measures are employed if necessary.
- c) Policies on use of cryptographic controls for protection of information, are implemented and followed.

7. **Network Control**

- a) Networks are adequately managed and controlled to protect from threats and to maintain security for the systems and applications using the network, including information in transit.

8. **Security Training and Awareness**

- a) Employees, contractors and third-party users are aware of information security threats and concerns, their responsibilities and liabilities, and are equipped to support organisational security policy in the course of their work. Employees are aware of the definition of personal data and sensitive personal data as stated by the European Commission and such other relevant authorities.
- b) Where relevant, employees, contractors and third-party users shall receive appropriate awareness training.
- c) Employees use institutional e-mail addresses when communicating or transferring data and/or personal data.

9. **Physical and environmental security**

- a) Appropriate security perimeters and entry controls are in place to prevent unauthorised physical access, damage and interference to the premises and information including end user devices.
- b) Equipment is correctly maintained to ensure reasonable continued availability and integrity.

10. **Protection of Organisational Records**

- a) Security policies include data retention and data destruction policies.
- b) Appropriate controls are implemented to reasonably prevent records from loss, destruction or falsification during their retention period.
- c) Upon request of the data exporter or upon termination of the contract, data of the data exporter the data importer, its affiliates or subcontractors hold, including any and all copies of the data of the data exporter residing on the data importer's backup media shall be destroyed in accordance with applicable legal requirements.
- d) Where requested by the data exporter, the data importer shall certify in writing these actions have been completed within 30 days of the request.
- e) The following shall be considered exceptions to this disposal requirement:
  - i. Data must be retained for legal or regulatory purposes; such data of the data exporter shall then be removed as soon as the legal retention periods have expired
  - ii. Data which the data exporter has requested the data importer to archive for legal hold purposes

11. **Technical Vulnerability Management**

- a) Efforts shall be made to consistently reduce risks resulting from exploitation of published technical vulnerabilities.

12. **Information Security Incident Management**

- a) Management responsibilities and procedures are established to ensure quick, effective and orderly response to security incidents and to report such incidents and mitigate weaknesses.
- b) Inform, without unreasonable delay, the data exporter of a data breach involving the personal data transferred by data exporter.

13. **Monitoring**

- a) Use of such appropriate systems and controls to detect unauthorised information processing activities.

14. **Configuration management**

- a) Establishment and maintenance of policies demonstrating adequate application of updates and patch systems.
- b) Creation and maintenance of hardware and software inventories and regular vulnerability scans.

c) Implementation of policies and/or audit controls enabling independent audits/testing of appropriate audit data on operational systems while minimizing the risk of disruption to business processes.

15. **Malware prevention**

a) Development of policies to help manage risks to the business processes from malware and include anti-malware defences.

16. **Information Risk Management**

a) A governance framework has been established and is consistently supported and reviewed