

EloView® Master Services Subscription Agreement

Welcome to EloView, a cloud based, device content deployment and device management system from Elo. This Agreement governs your subscription to and use of our Services through the Site. If you register for an Evaluation of the Service, this Agreement will also govern such free Evaluation. By accepting this Agreement, either by clicking through electronically, signing a written agreement or by executing an Order Form that references the EloView Master Services Subscription Agreement, you confirm that you have reviewed the Agreement, are authorized to accept it and bind Customer. **If you do not have the legal authority to bind the Customer, please do not check the box specifying that you accept the terms of this Agreement and refrain from using the Services. You may not access the Services if you are our direct competitor, unless we consented to such access in advance in writing.**

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

- a. **“Account”** means the account created for you to access the Services on the Site.
- b. **“Acceptable Use Policy”** means the Elo Acceptable Use Policy, as it may be updated from time to time, a copy of which is attached to this Agreement as Schedule 1.
- c. **“Administrator Account”** means an account created for a user designated by you to administer your Account on your behalf, which will be the first Account created.
- d. **“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.
- e. **“Agreement”** means this Master Services Subscription Agreement, including all schedules and attachments hereto, as it may be updated from time to time. Current versions of our Agreement and our Privacy Policy can be found on our Site.
- f. **“applicable law”** means any applicable federal or state laws or other country’s laws, rules, or regulations.
- g. **“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.
- h. **“Content”** means images, business related data, including employee and agent data, and End-User information and data, mobile, or web applications, websites, the display of purchases and communications with others uploaded by you to the Site or User Account, or transmitted by you using the Services.
- i. **“Customer”**, **“you”**, or **“your”** means the legal entity for which you are accepting this Agreement or signing this Agreement, as applicable and any Affiliates of such entity.
- j. **“Documentation”** means our 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 by us.
- k. **“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.
- l. **“Elo”**, **“we”**, **“our”**, or **“us”** means Elo Touch Solutions, Inc. or any of its designated worldwide subsidiaries issuing an Order Form (as defined below).
- m. **“Elo Device”** means an Elo hardware device or product of any kind, including monitor and all-in-one computer.
- n. **“include”** or **“including”** and variations will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words “without limitation.”
- o. **“Malicious Code”** means code, whether in object or source format, scripts, programs, files, agents, or other tools intended to harm, hack into, or intervene with an intended use of a Software or Service, including viruses, time bombs, malware, spyware, worms, Trojan horses, or other malicious or disruptive code.
- p. **“Order Form”** means an Elo designated ordering document specifying the Services to be provided under this Agreement, the term of use and the fees paid and entered into between you and Elo, including through electronic acceptance, and including any amendment, supplement, or extension thereof.

- q. “**Party**” or “**Parties**” as use means either Customer or Elo or both Customer and Elo.
- r. “**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.
- s. “**Purchased Services**” means Services that you purchase under an Order Form, requiring payment of a fee designated therein, to be used by you or by a designated third party who also accepts the terms of this Agreement.
- t. “**Service**” or “**Services**” means the EloView services, mobile or web applications, or Software offered under this Agreement and ordered or subscribed by you either under a free trial or an Order Form and made available by Elo online, including any associated offline components, as may be described in any Documentation from time to time, but excluding any Content or applications not provided and created by us.
- u. “**Site**” means the website Elo uses to offer and administer the Services, currently being www.eloview.com and any other successor or connected sites.
- v. “**Software**” means any software, library, utility, tool, or other computer or program code (including any updates thereto) provided, or made available by Elo to you and related website applications made available by Elo, whether installed locally on the Elo hardware device or otherwise accessed by you through the Internet or other remote means (such as websites, portals, and cloud-based solutions), including any related Documentation.
- w. “**Subscription Term**” means the term of your subscription to purchase the Purchased Services, as designated in the Order Form.
- x. “**Third Party Application(s)**” means a web-based or offline software application or service that is provided by any third party or by you and interoperates with a Service, including any application or tool that is referred to you by Elo or is hyperlinked through the Site.
- y. “**Territory**” means the United States, Canada, Japan, and European Union member countries.
- z. “**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 your Account.

2. Free Trial or Evaluation. If you subscribe for a free trial or an evaluation of the Service, including in conjunction with an Elo Device being provided to you by Elo for this evaluation (the “Evaluation”), either through the Site or an Order Form, we will make certain Services available to you on a limited trial basis free of charge until the earlier of the following occurs: (i) the end of the free evaluation or trial period for which you subscribed to use the Services or any portion thereof, which will be ninety (90) days from your first Account activation, unless otherwise agreed by Elo in writing (the “Evaluation Term”); or (ii) the start date of any Purchased Services subscribed for by you for those Service(s). 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 your Evaluation and use of the Service is conditioned upon your compliance with the terms thereof, this Agreement, and the accuracy of any information provided by you during such registration. You must designate a hardware device on the Site within thirty (30) days following creating an Account. If you are participating in an Evaluation that enables you to use a Service without charge, you must discontinue any usage of the Services and return the Elo Device to Elo prior to the end of the Evaluation Period in order to avoid incurring any charges for your continued use of the Service. If the Elo Device is not returned to Elo upon the expiration of the Evaluation Period, Elo may charge you for the Elo Device as set forth in the applicable quote or other similar documentation. You may provide us feedback, enhancement, ideas, or suggestions for improvement of the Service, the Elo Device or our other product offerings, and you hereby confirm 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 Section 2, your Evaluation of the Services and/or the Elo Device are subject to the use rights and restrictions set forth in this Agreement. **ANY DATA YOU ENTER INTO THE SERVICES AND ANY CUSTOMIZATION MADE TO THE SERVICES BY OR FOR YOUR USE DURING THE EVALUATION PERIOD WILL NOT BE RETAINED BY US AND MAY BE LOST, UNLESS YOU BUY A SERVICES SUBSCRIPTION TO THE SAME SERVICES BEFORE THE END OF SUCH EVALUATION PERIOD. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, DURING THE EVALUATION PERIOD, THE SERVICES AND ELO DEVICE ARE PROVIDED “AS IS” WITHOUT ANY WARRANTY. ELO MAY TERMINATE ANY EVALUATION PERIOD OR DENY A REQUEST TO PURCHASE A SUBSCRIPTION.**

3. Our Duties.

- a. *Provision of Purchased Services.* We will make the Services available to you pursuant to this Agreement and the applicable Order Form(s) during the Subscription Term or during the Evaluation Period. We will provide standard Services support generally available to other Services customers, directly to the Administrator, in accordance with the then-current terms and conditions governing support. We will make commercially reasonable efforts to make technical support available via email at eloviewsupportNA@elotouch.com for U.S. and Canadian support;

eloviewsupportEU@elotouch.com for European support; and tpstech@tps-support.com for Japanese support; or via telephone from 8:00 am to 5:00 pm U.S. Eastern time at 1-800-577-1459 or 1-865-329-7869 for U.S. and Canadian support; from 8:00 am to 5:00 pm Belgium time at +32 (0)16704545 for European support; and 8:00 am to 5:00 pm Japan time at +81 3-5464-5835 for Japanese support; except for: (i) planned downtime; and (ii) any Services or support unavailability caused by circumstances beyond our reasonable control, including an act of God, an act of any governmental authority or agency, fire, earthquake, flood, act of war, act of terror, civil unrest, strike or other similar labor disturbance, internet, hosting service, or server service failure or delay, or denial of service attack. You must provide Elo with sufficient information in order for us to duplicate any error encountered by you. We may, at our discretion, make available to you Software updates related to, but not limited to, security, patch updates, bug fixes, error corrections, and the like, and you must accept any push notification requiring acceptance prior to installation to ensure that you are using the most recent Service. Elo will have no obligation to provide technical 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) your 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. *Your Data.* We will maintain reasonable administrative, technical, and physical safeguards for protection of the security, confidentiality, and integrity of your Content, subject to the terms and conditions set forth herein. Those safeguards will include measures for preventing access, use, modification, or disclosure of your Content by our personnel, except (i) as compelled by court of competent jurisdiction or by law; (ii) as necessary in order to provide the Services; or (iii) as you permit or instruct us in writing.
- c. *Our Personnel.* Our personnel will not have any employment relationship with you and our relationship will be that of an independent contractor. We will be responsible for the performance of our personnel, including employees and contractors, as it relates to our compliance with our obligations herein.

4. Administrator Account.

- a. After creating the Account and entering into or confirming acceptance of this Agreement, Elo will enable you to create and access your Account and the Administrator Account, which will include an administrative console ("Admin Console") that will permit you to perform certain administrative functions relating to your employees, contractors, agents, or other end users (each, an "Account User") including creating a User Account, designating an Elo Device, removing an Account User, and otherwise using the Services and suspending or terminating Account access. Account Users will be required to have a separate User Account linked to your Administrator Account and you are required to provide each Account User, who is not your employee, with a copy of this Agreement and obtain their consent to be bound by such terms prior to the use of the Services, unless they have otherwise accepted the EloView terms of use by clicking through them when setting up the User Account. You understand 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 individual account and/or your Account and Service access. You are 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 your Account Users in violation of the terms of this Agreement. You 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 certain services, you may be required to provide current, accurate identification, contact, and other information as part of your registration and/or continued use of Services.
- b. You may establish your own rules for Account Users' access and use of the Services. Any such rules will only affect the relationship between you and your Account Users and must be at least as restrictive as the terms of this Agreement. Without limiting the foregoing, you are responsible for determining and obtaining any permissions from Account Users necessary to enable you to perform the administrative functions available through the Admin Console and enforce any such rules. You will prevent unauthorized use of your Administrator Account. You will immediately notify Elo of any unauthorized use of or access to the Service of which you become aware.
- c. You are 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 your Account. You will be solely responsible for ensuring that you have designated necessary and appropriate individuals as Administrators and for removing Account privileges from individuals who no longer require them. **YOU ACKNOWLEDGE THAT IF NO ACCOUNT ADMINISTRATOR IS ABLE OR WILLING TO FULFILL SUCH FUNCTION AND/OR YOU OTHERWISE FAIL TO MAINTAIN CONTROL OF THE ADMINISTRATOR ACCOUNT(S), YOU MAY BE UNABLE TO ACCESS OR CONTROL THE**

ACCOUNT OR BENEFIT FROM THE SERVICES AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY RESULTING LOSSES, COSTS, AND EXPENSES.

5. Use of Services.

- a. *Services Subscription.* Unless otherwise agreed by the parties in the applicable Order Form, (i) the Services are purchased as a subscription to be used solely in the Territory during the Subscription Term and for the number of device subscriptions set forth in the Order Form; (ii) you may use the Services to, among other features, manage your Account information, business information, Content, or other similar data (collectively and individually “Data”); and (iii) you may add Services subscriptions to your Account by entering into an additional Order Form with Elo. The Services are optimized for use with certain designated Elo Devices and may not perform or not perform well with other devices. The parties acknowledge that the Services are not designed to transmit any personally identifiable information (such as credit card data, national identity number, and the like).
- b. *License and Use Restrictions.* Elo hereby grants you a limited, temporary, personal, non-exclusive, revocable, non-transferable license, solely for your benefit, without the right to sublicense, to use the Services during the Subscription Term or the Evaluation Term, as applicable, in accordance with this Agreement. All rights not explicitly granted herein are reserved to Elo. You may not, directly or indirectly (i) use the Services to store or transmit any infringing, libelous, malicious, or otherwise unlawful or tortious content, or to store or transmit content in violation of any third-party privacy rights or in violation of this Agreement; (ii) interfere with or disrupt the integrity of the Services or any third party data stored therein, (iii) attempt to gain unauthorized access to the Services or related systems or networks; (iv) use the Services to develop any competing product or Service, create benchmark data, reverse engineer, disassemble, or decompile the Services or otherwise copy a Service or any part, feature, function, or user interface; (v) share an Account Administrator or Account User’s password with any third party; or (vi) exceed the device subscriptions set forth in the Order Form; (vii) permit direct or indirect access to or use of any Service in a way that circumvents a usage limit hereunder; (viii) make any Service available to, or use any Service for the benefit of any third party other than you or the Account Users; (ix) remove or alter any of Elo’s or its licensors’ restrictive or ownership legends on or in the Software or Site and must reproduce such legends on all copies explicitly permitted to be made, if any; or (x) store more than 1GB of Content using the Service. The Services may only be used in the Territory and you must be authorized to conduct business in the Territory the Service is being used. You may download updates to our Services as made available to you by Elo so long as your Account is current. Elo approved versions of our 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 Services, and the limited license granted to you and any Account Users, for unauthorized use of the Service or the Site, or your violation of this Agreement.
- c. *Additional Terms of Use.* Any Elo Device purchased either from us or from any of our authorized distributors or resellers for any use including in connection with the Services is subject to the Elo Terms and Conditions of Sale (or the “Product Terms of Sale”) at www.elotouch.com. If there is a conflict between this Agreement and the Product Terms of Sale, this Agreement will govern as it relates to the Services and the Product Terms of Sale will govern as it relates to such Elo Device purchase. This Agreement also incorporates by reference our Privacy Policy and you hereby confirm that you have read and understood and further will comply with the terms thereof. Certain Service functions may be subject to third party license terms and your use thereof is subject to such license terms, which can be accessed through the provider’s site or which may be available through the Elo site.
- d. *Usage Responsibilities.* You will (i) be responsible for the legality, accuracy, and quality of your data and the Content you store or transmit using the Site and Services; (ii) use the Services only in accordance with the applicable Documentation and applicable law; (iii) be responsible for all Account Users’ compliance with this Agreement and the Acceptable Use Policy and the related use restrictions; (iv) use reasonable efforts to safeguard and prevent damage to, or loss of, or unauthorized use or access to the Services and notify us promptly of any suspicion thereof; and (v) if you subscribe to any Third Party Application or product that interfaces with the Site or Service, you will comply with and be responsible for Account Users’ compliance with the terms of use of such offering and with applicable laws. You will be responsible to support the Account Users regarding issues that are particular to their access to the Services (such as resetting passwords, suspending accounts, sharing Customer’s notes). The Account Administrator will be responsible for uploading Content and training Account Users to properly use the Services and for backing up any Content, including APKs, prior to uploading for transmission using the Services. If you exceed a contractual Services usage limit, we may in our sole discretion try to work with you to seek to reduce such usage of the Service or charge you an additional fee to reflect your actual usage. Please keep in mind that the Account retains hardware device history or activity commanded of a device (such as CPU information) for up to 30 minutes and if you want to retain it for a longer period of time you must do so independently.
- e. *End-User Information and Data.* If you intend to collect any information or data from your end-users and/or customers (collectively, “End-Users”), you will be the controller of such data and it is your sole responsibility to

comply with all applicable laws (including, but not limited to all applicable data protection and privacy laws) with respect to the collection of such data and information and obtain any necessary permissions or consents. You may upload and store your End-Users' electronic mail address(es) if they were obtained in accordance with applicable law, including, but not limited to all applicable data protection and privacy laws (i.e., with consent, not during a payment card transaction and not as a requirement for the payment card sale) and in accordance with the applicable instructions on the Site and Software. Elo may use any collected and stored End-Users electronic mail address(es) in accordance with Elo's Privacy Policy and for Elo's business purposes including providing, maintaining, and improving the Services, recognizing End-Users in subsequent transactions with you and marketing, advertising, and promotional opportunities (e.g., contests, special offers, programs, or activities etc.). You will obtain any required consents from End-Users to permit Elo's use of such information.

- f. *Content Transmission.* As part of the Service, you may upload Content to the Site. You will not upload any Content using the Services or Site unless you have created that Content yourself or you have consent from the owner(s) to do so. You also will not upload or transmission any Malicious Code. If you choose to upload or deliver Content using the Service, you will do so in accordance with the applicable instructions on the Site and this Agreement. In the event Elo receives an abuse complaint that relates to your use of the Services, whether such use is by you or your End-Users, Elo will notify you and you will immediately address such complaint and follow-up until such complaint has been resolved to Elo's satisfaction. Elo reserves the right to determine, at its discretion, whether any Content complies with the Acceptable Use Policy and is satisfactory for use with the Service, and may suspend use of the Services pending any investigation of a violation of the Acceptable Use Policy and/or remove any Content it deems in violation thereof.
- g. *Sensitive Data.* You will not upload to the Service or use it to collect: (i) any personally identifiable information or personal data, except as necessary for the establishment of your or your End-Users Account; or (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), or (iv) data as defined in Art. 8 para. 1 of the EU Data Protection Regulation (Directive 95/46/EC) ((i) through (iv), collectively, "Sensitive Data"). You also acknowledge that Elo is not acting as your Business Associate or subcontractor (as such terms are defined and used in HIPAA), and that the Service is not HIPAA compliant. "HIPAA" means the Health Insurance Portability and Accountability Act, as amended and supplemented. Notwithstanding any other provision to the contrary, Elo has no liability for Sensitive Data.
- h. *High Risk Applications.* You may not use the Services or any Elo Devices where their 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 Service could lead to death, personal injury, or severe physical or property damage.
- i. *Elo's Use of Data.* We collect, analyze, format, organize, and relay information generated in connection with the Services and may incorporate results into future service offerings, including by analyzing your User Information or the use of a hardware device or otherwise analyze Content and devices use as it pertains to a general group of users. We use information collected from cookies and other technologies to improve your user experience and the overall quality of our services. One of the technologies we use to do this is analytics, whereby automated systems analyze your Content and use of the Services to offer you relevant product features, including customized statistical analysis, results, and tailored advertising. We may additionally aggregate your Content, Site, and device use data, and we may use or share aggregated, non-personally or user identifiable information publicly and with our partners – like publishers, advertisers, other customers, or connected sites. We may also access your Account using your password to debug the Services and in doing so may change the password and restore it to its original state. In so doing, we may use third parties to provide certain services accessible through the Site. Elo does not control those third parties or their services. These third parties may have their own terms of use and other policies. You must comply with such terms and policies as well as this Agreement when you use those services. Use of such services is at your sole risk and expense. Elo will not be liable to you in any way for your use of such services. In addition, any information submitted by either you or an End-User will be subject to Elo's Privacy Policy. Elo takes measures to protect your personal and business information provided however we take no responsibility and assume no liability for any of your Content, including any loss or damage to any of your Content. You are solely responsible for obtaining proper backup and for any and all activity that occurs in your Account and you must keep your password secure.
- j. *License to Elo.* Your ownership of the Content that you upload or transmit using the Services or your Data is subject to the rights under this Agreement. You grant Elo a royalty-free, worldwide, transferable, nonexclusive right and license to use such Content and Data, in all media existing now or created in the future, solely as Elo deems necessary to enable you to use the Service, debug the Services, use the information as outlined in subsection 5.i.

above, or 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 to third parties for use in similar services or to Elo customers under applicable law. You will obtain any required consents of End-Users to permit Elo's use of such information.

- k. *Pre-Release Services.* We may elect to invite you to participate in our Pre-Release Services at no additional charge. You may elect to accept or decline such invitation at your sole discretion. Pre-Release Services are designated for Evaluation only, are not intended for commercial use or live production environment, are not supported and may be subject to additional terms. Unless otherwise agreed by Elo in writing, a Pre-Release Service Evaluation Period will terminate 90 days from the Evaluation Period start date. Elo may discontinue any Pre-Release Services at any time in its sole discretion and may elect not to make it available for commercial use. You acknowledge 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 you acknowledge that your subscription to the Services is not contingent on the delivery or commercialization of any future functionality or features. We will have no liability for any damages arising out of or in connection with your use of a Pre-Release Service.
- l. *API License.* To the extent your Services include a license to the EloView application program interface (including any sample code or scripts, "API"), your 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.

6. **Payment for Services.**

- a. *Fees for Services.* You will pay the fees specified in the applicable Order Form (the "Fees") for the right to use the Purchased Services subject to the terms hereof. Fees are based upon the Services subscribed to and the number of hardware devices authorized for use with the Services and not on actual usage. Purchased Services 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 Evaluation Period or Subscription Term, unless an Order Form is signed by the parties and Fee payment arrangements are made by you. If you choose to download an Elo mobile application that carries an additional fee, you will be responsible for such per application download fee in addition to the Fees. We reserve the right to change our Fees, provided, however that Fees set forth in an Order Form will remain in effect for Subscription Term and Purchased Services.
- 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 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 check upon prior approval of Elo and issuance of an invoice by Elo, or (2) an alternative payment method accepted by Elo such as wire transfer to an Elo designated bank account (each, an "Accepted Payment Method"). You agree that: (i) you will fulfill your obligation to pay the Fees by the date on which payment is due; (ii) any payment information you provide is true and accurate; (iii) you are authorized to use the Acceptable Payment Method; (iv) we have permission to retain the payment information, including all submitted debit and credit card information, submitted by you and your issuing bank or the applicable payment network, if credit card payment is approved by us; and (v) we are authorized to charge you the Fees for the Service using the Accepted Payment Method and the information you provide that is stored in your Account as of the applicable date for payment. You assure us of payment and our rights to collect payment include any obligation you may have to pay any Taxes or delivery charges described as being applicable to the Service. Unless otherwise expressly provided in an Order Form, we will issue our invoice on or shortly after the date on which the Service is purchased and on any periodic basis 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 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 you are your responsibility and may not be deducted from the amount due Elo. In addition, you will be responsible for any credit card chargeback fees as well as any reasonable collection costs we incur as a result of your failure to pay on a timely basis. If you purchase a Service that renews automatically, such as quarterly or annually, you acknowledge that we may process your 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 your Service subscription, as applicable. In addition, you acknowledge that we have permission to retain and/or share with financial institutions and payment processing firms (including any institutions or firms we retain in the future) information regarding your purchase and your submitted payment information in order to process your purchase. If your Purchased Service subscription began on a day not contained in a subsequent month (e.g., your service began on January 30, and there is no February 30), we will process your payment on the last day of such month.
- c. *Taxes.* You are 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 you will pay us all Fees due hereunder without any reduction for Taxes. If we are obligated to collect or pay Taxes, we 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. You acknowledge that U.S. sales tax will be sourced by the primary use service address(es) on the Order Form. You will pay all Fees without any deduction or withholding for or on account of Tax (a "Tax Deduction"), unless a Tax Deduction is required by applicable law, and you 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, applicable Tax Deduction before making any Tax Deduction. You will promptly notify Elo prior to the due date of the Tax Deduction in order to confirm that there is no uncertainty as to the application of the Tax Deduction and, in any event, the opinion of Elo will prevail. If you are required by applicable law to make a Tax Deduction, you will apply the reduced rate of withholding, or dispense with withholding, as applicable. Within thirty days you must provide Elo with an official tax receipt or other appropriate documentation to support such payment. You 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 it will survive the termination of this Agreement.

- d. *Suspension of Service and Acceleration.* If any amount is owed by you under this Agreement or an Order Form for our Services is 30 or more days overdue, we may, in addition to any other rights or remedies we have available to us under this Agreement or under applicable law, accelerate your unpaid fee obligations under such agreement and all payment obligations thereunder will become immediately due and payable. In addition, we may suspend our Services to you until such amounts are paid in full. We will provide you with at least a seven business days' notice that your Account is overdue before suspending any Services.
 - e. *Overdue Charges and Costs of Collection.* If any invoiced Fee is not received by us by the due date thereof, then in addition to the Fees, you will pay all reasonable costs we incur to collect any unpaid or past due amounts, including reasonable attorneys' fees and other associated costs. 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.
 - f. *Third Party Applications.* You may be able to download and/or use Third Party Applications through use of the Service. Service Fees do not include any of the third-party fees you incur in connection with using the Service including fees charged by your Internet access provider, any wireless carrier charges for cellular or data services, and any other Third Party Applications with which you may use the Service. You are 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 fees) and may also subject you to additional regulatory or legal requirements. Such terms are exclusively between you and the third party. Elo has no responsibility or liability associated with any use of such Third Party Applications and information you submit at a Third Party Application is not controlled by Elo, whether as to how it is collected, stored, used, or otherwise. Hyperlinks to Third Party Applications are not sponsored by or affiliated with the Service or Elo, and Elo makes no representations or warranties about these Third Party Applications.
7. **Confidentiality.** By accessing the Services, you will have access to certain of our Confidential Information, including but not limited to methods, techniques, programs, devices, and operations and any other information we designate as our Confidential Information. Your 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). You 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 and (iii) will not disclose or use the Confidential Information following the termination of the Service subscription, 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 of copies of Confidential Information to 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 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.

8. **Proprietary Rights.**

- a. We respect the intellectual property rights of others and ask you to do the same. We may therefore suspend or terminate the access privileges of those who infringe the copyrights or other intellectual property rights of Elo or others. We retain all ownership and intellectual property rights to the Service and Site, except for the license rights granted to you expressly under this Agreement. Without limitation, Elo owns the Elo Trademarks, the domains, Software and all other content made available through the Site, and the copyrights in and to the Site, and the

technology used in providing the Service. You will not acquire any right, title, or interest therein under this Agreement or otherwise to any intellectual property owned by Elo. You will not modify, disassemble, decompile or reverse translate or create derivative works from the Software or otherwise attempt to derive the source code, 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 and restrictions explicitly set forth in this Agreement.

- b. Elo owns all Elo trademarks, including the Elo logo, Elo Touch, EloView and Elo Touch Solutions (collectively, "Elo Trademarks"). 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. They 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. You may not use Third Party Marks without the written permission of such third party.
- c. Elo claims no ownership over any Content submitted, posted, or displayed by you on or through the Services. You or a third party licensor, as appropriate, retain all patent, trademark, and copyright to any Content you submit, post, or display on or through the Services and you are responsible for protecting those rights, as appropriate. You hereby grant 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 you.

9. **Privacy.**

- a. Elo takes measures to protect your personal and business information stored or transmitted while using the Services. For further information and detail on such measures, see our Privacy Policy at http://www.elotouch.com/aboutelo/US_PrivacyPolicy.asp (the "Privacy Policy"). In the event that Elo determines that such safeguards have been breached or violated and your information has been compromised, Elo will notify you and any law enforcement agency or other institution as Elo may be required by applicable law. It is your responsibility to notify your End-Users. The use of any Services is subject to the Elo Privacy Policy. Personal information that you supply to Elo, and any information about your use of the Services that Elo obtains from you, the Account Administration, any Account User or the End-User, including Content, will be subject to the Privacy Policy. In addition, Elo email addresses are provided solely for user queries relating to Elo. The capture of emails for use with unsolicited email is not permitted. Solely to the extent required by law, or in connection with our policies and procedures, you acknowledge that we are permitted to share information about you with third parties who are Elo's service providers or contractors, solely as necessary in order to provide the Services hereunder. You authorize us to verify identifying information about you, including by use of public information. You further permit us to periodically obtain credit or other public reports regarding you and/or your business to determine whether you meet the requirements for an Account.
- b. Elo and its partners 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 your location data, including the real-time geographic location of your device, and you hereby consent to Elo's collection, use, transmission, processing, and maintenance of such location data to provide such services. Such information may include device ID, device type, and real-time geographic location of your device at the time of your request. You hereby acknowledge that Elo may associate certain personal identifiable information with the location of your device. In addition, we may store your "last known location" on your device, and we collect, maintain, or track your location history. If your location data is transmitted to a partner in order to provide a feature or service, it is passed anonymously and not shared in such a way as to be personally identifiable. Currently, various browsers – including Internet Explorer, Firefox, and Safari – offer a "do not track" or "DNT" option that relies on a technology known as a DNT header, which sends a signal to Web sites' visited by the user about the user's browser DNT preference setting. You may enable or disable those capabilities through the browser of your choice. Elo currently adopts the browsers' DNT signals with respect to the Company's Web sites.

10. **Indemnification.**

- a. *Elo's Indemnification Obligations.* We will defend you against any claim, demand, suit, or proceeding made or brought against you by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a "Claim Against You"), and will indemnify you from any damages, reasonable attorney fees and costs finally awarded against you as a result of, or for amounts paid by you under a court-approved settlement of, a Claim Against You, provided you (a) promptly give us written notice of the Claim Against You, (b) give us sole control of the defense and settlement of the Claim Against You (except that we may not settle any Claim Against You unless it unconditionally releases you of all liability), and (c) give us all reasonable assistance, at our expense. If we receive information about an infringement or misappropriation claim related to a Service, we may in our discretion and at no cost to you (i) modify the Service so that it no longer infringes or misappropriates, (ii) obtain a license for your continued use of that Service in

accordance with this Agreement, or (iii) terminate your subscriptions for that Service upon 30 days' written notice and refund you any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from a third party product, service, or application, the combination of such third party offering with our Services, or your breach of this Agreement.

- b. *Your Indemnification Obligations.* You 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 third party claims, liability, damages, expenses, and costs (including reasonable attorney's fees) caused by or arising from your use of the Service, including uploading Content, your (or your Account Users') breach or other violation of the terms of this Agreement, including any representations, warranties, and covenants herein, or your infringement, or infringement by any other user of your Account, of any intellectual property or other right of anyone, provided we (i) promptly give you written notice of the claim against us, (ii) give you sole control of the defense and settlement of such claim (except that you may not settle any such claim without our consent unless it unconditionally releases Elo and its Affiliates of all liability and does not cause any reputational damage to Elo or such Affiliates), and (iii) give you all reasonable assistance, at your expense.
- c. *Exclusive Remedy.* This Section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim subject to indemnification obligations.

11. Representations and Disclaimers.

- a. Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- b. YOU UNDERSTAND THAT YOUR USE OF THE SITE AND SERVICES (INCLUDING ANY DOWNLOADS OR ANY LOSS OF DATA OR OTHER DAMAGE TO YOUR COMPUTER SYSTEM YOU EXPERIENCE FROM USING THE SITE AND SERVICE) IS AT YOUR SOLE RISK. YOU UNDERSTAND 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 YOU. YOU ACKNOWLEDGE THAT ELO MAKES NO WARRANTY THAT THE SITE OR SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. YOU UNDERSTAND THAT ELO DOES NOT WARRANT THAT THE RESULTS OBTAINED FROM YOUR USE OF THE SITE OR SERVICES WILL MEET YOUR EXPECTATIONS. NO WARRANTY OF ANY KIND, WHETHER ORAL OR WRITTEN, CAN MODIFY THE TERMS OF THE DISCLAIMER SET FORTH HEREIN. YOUR USE OF THE SITE IS AT YOUR 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. ALL PRODUCTS AND OTHER SERVICES AND THIRD PARTY SITES ON THE SITE, OR OBTAINED FROM A WEBSITE TO WHICH THE SITE IS LINKED, ARE PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SECURITY, OR ACCURACY. ELO DOES NOT ENDORSE AND IS NOT RESPONSIBLE FOR THE MERCHANTABILITY OF ANY PRODUCT OR SERVICE ACCESSED FROM THE SITE OR A LINKED SITE. OTHER THAN AS REQUIRED BY LAW, UNDER NO CIRCUMSTANCE WILL ELO BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY YOUR RELIANCE ON INFORMATION OBTAINED THROUGH THE SITE OR A LINKED SITE, OR YOUR RELIANCE ON ANY PRODUCT OR SERVICE OBTAINED FROM THE SITE OR A LINKED SITE.

12. Limitation of Liability.

- a. NOTWITHSTANDING ANY OTHER PROVISION HEREIN OR IN ANY OTHER COMMUNICATION, 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, INDEMNIFICATION, OR OTHERWISE SHALL IN NO EVENT EXCEED IN THE AGGREGATE THE TOTAL FEES RECEIVED BY ELO FOR THE PURCHASED SERVICES DURING THE PRECEDING TWELVE (12) MONTHS.

- b. NEITHER ELO NOR OUR THIRD-PARTY SERVICE PROVIDER NOR 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, INCLUDING THOSE RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICES; (ii) THE COST OF SUBSTITUTE GOODS AND SERVICES, (iii) ANY PRODUCTS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO, THROUGH OR FROM THE SERVICES; (iv) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA OR FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR YOUR ACCOUNT, OR THE INFORMATION CONTAINED THEREIN; (v) STATEMENTS OR CONDUCT OF ANYONE ON THE SERVICES; (vi) THE USE, INABILITY TO USE, UNAUTHORIZED USE, PERFORMANCE, OR NON-PERFORMANCE OF ANY THIRD PARTY ACCOUNT PROVIDER SITE; OR (vii) ANY OTHER MATTER RELATING TO THE SERVICES.

13. **Term.**

- a. *Agreement Term.* This Agreement will be effective upon the Effective Date and will remain in effect until all subscriptions to Services hereunder have expired or have been terminated.
- b. *Purchased Service Term.* Prior to the end of the Subscription Term, you will be required to renew the Services for an additional period to continue use of such Services. Elo will use reasonable efforts to contact you prior to expiration of the current Subscription Term. Following expiration of the Subscription Term this Agreement will not automatically terminate unless otherwise terminated by either party or as provided herein. Customer's access to and right to use the Services will be suspended at the end of any Subscription Term unless Customer renews its right to use the Services upon payment of applicable fees.

14. **Termination.**

- a. You may terminate this Agreement or suspend your Account by contacting Elo, provided that in no circumstances will you be entitled to any refund for 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 Purchased Services Subscription Term. In addition, either party may terminate this Agreement in the event the other party breaches or defaults any material terms 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, we may suspend the Services within twenty-four hours. Notwithstanding the foregoing, (i) either party may terminate this Agreement immediately in the event of a material breach by the other party of its obligations under Section 7 (*Confidentiality*) and (ii) Elo may terminate this Agreement immediately in the event of a material breach by you of your obligations under this Agreement or Acceptable Use Policy. If Customer terminates this Agreement for breach by Elo, 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 months prior to the date of termination under this Agreement.
- 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 giving a termination notice.
- c. 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 5.j (*License to Elo*), 7 (*Confidentiality*), 8 (*Proprietary Rights*), 9 (*Privacy*), 10 (*Indemnification*), 11 (*Representations and Disclaimers*), 12 (*Limitation of Liability*), and 15 (*General*).

15. **General.**

- a. *Entire Agreement.* This Agreement along with the Order Forms and Privacy Policy constitute the entire agreement between you and Elo regarding the Services. Any term or condition in any order, purchase order, confirmation, or other document furnished by you or Elo which is in any way inconsistent with, or in addition to, the Order Form and

this Agreement is hereby expressly rejected, will be null and void, and will be superseded by this Agreement and the Order Form, unless signed by both parties. All correspondence pertaining to a purchase of Products 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. You acknowledge that Elo may provide notice to you and other information concerning the Services electronically, including any notice to any email address supplied by you. Any Order Forms, agreements or amendments must be in writing and may be signed in counterparts, including by electronic signature, each of which will be considered an original.

- b. *Assignment.* You 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 US Government the provisions in this section apply to access to and use of the Service and Software. No Government procurement regulation or contract clauses or provision will be deemed a part of any transaction between the parties under this Agreement unless its inclusion is required by law, or mutually agreed upon in writing by the parties in connection with a specific transaction. Customer acknowledges that the Service and Software are commercial items that may consist of “commercial computer software” and “commercial computer software documentation” as such terms are defined in 48 C.F.R. 252.227-7014(a)(1). Such materials are provided solely as “commercial computer software”, “commercial computer software documentation” and “technical data” as such terms are used in 48 C.F.R. 12.212 and FAR 12.211. Computer software and technical data is provided as “restricted computer software and “limited rights data” under 48 CFR 52.227.14 Alternative I.
- d. *Export Compliance.* The export and re-export of your 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 you must not use the Services or Elo Devices in violation of any Export Regulations. In addition, you must ensure that the Services are not provided to persons on the United States Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals. You 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 and will not directly or indirectly export or re-export any Services and/or Elo Devices.
- e. *Notices.* Any notice required or permitted to be given hereunder will be given in writing by personal delivery, by e-mail 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.
1033 McCarthy Blvd.
Milpitas, CA 95035
Attention: General Counsel
generalcounsel@elotouch.com

- f. *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. The arbitration will be held in San Jose, 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 its 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

ACCEPTABLE USE POLICY

You will comply with the following “Acceptable Use Policy” at all times while using the Service. Capitalized terms used but not defined herein have the meaning set forth in the Elo View Master Services Subscription Agreement. You will not:

- violate the Product Terms of Sale, this Agreement, our Privacy Policy, or the legal rights (including the rights of publicity and privacy) of others;
- use the service for gambling, adult entertainment, sexually explicit, or other similar 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 any other person, or misrepresent your identity or affiliation with any person or organization;
- conduct yourself 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 associated with the Service;
- create a risk to public safety or health in general or to any individual’s health and safety;

You 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 Services, Software, or Products;
- 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 our sole discretion, 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.