



Elo OS 360 Terms and Conditions

IMPORTANT - READ CAREFULLY: These Elo Touch Solutions, Inc. (“**Elo**”) OS 360 Terms and Conditions (these “**Terms**”) together with the Purchase Order(s) (defined below), as applicable (together, “**Agreement**”), shall apply to and govern the subscriptions(s) to access and use Elo Software as a Service (“**Elo OS 360**”) through the Portal (defined below). **YOU, AS A CUSTOMER (defined below), AGREE TO BE BOUND BY THE TERMS OF THE AGREEMENT BY PURCHASING, INSTALLING, ACCESSING, OR OTHERWISE USING THE SERVICE (defined below). IF YOU DO NOT AGREE, DO NOT PURCHASE, INSTALL, ACCESS, OR USE THE SERVICE.**

1. **Definitions.**

(a) “**Account**” means the account created for Customer’s access to the Service via the Portal.

(b) “**Account User**” means Customer’s employees, contractors, agents, or other authorized users Customer designates to use the Service, including End Customers’ employees, contractors, agents or other authorized users.

(c) “**Administrator(s)**” means the Account User(s) designated by Customer to administer the Account on Customer’s behalf.

(d) “**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.

(e) “**Agreement**” means these Terms, including all schedules and attachments hereto and the applicable Purchase Order(s).

(f) “**Applicable Law**” means any applicable US federal, state, or local laws or another country’s applicable laws, rules, or regulations.

(g) “**Authorized Elo Device**” means an Elo Device authorized to access and use the Service.

(h) “**Customer**” means the Party purchasing the Service, which may make use of Authorized Elo Devices and access and use the Service under the rights granted pursuant to the Agreement itself, or may be a Reseller.

(i) “**Distributors**” means Elo authorized distributors.

(j) “**Data**” means Account information, business information, OS Updates, or other similar data.



(k) **“Documentation”** means Elo's user manuals, handbooks, end user documentation, and guides relating to the Service provided by Elo to Customer either electronically (including www.elotouch.com) or in hard copy form relating to the Service.

(l) **“Elo Device”** means an Elo hardware device used to access the Service.

(m) **“Elo IP”** means the Service, the OS Updates, the Documentation, and any and all intellectual property provided to Customer or any End Customer in connection with the foregoing.

(n) **“End Customer”** means Customer's end customers making use of Authorized Elo Devices (i) who are authorized by Customer to access and use the Service under the rights granted to Customer pursuant to the Agreement, and (ii) for whom access to the Service has been purchased for its own use and not for resale.

(o) **“End Customer Data”** means any information or data, including OS Updates, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of a Customer or an End Customer through the Service.

(p) **“EU and UK Data Protection Law”** means the Applicable Law in effect in the European Union (“EU”) governing the collection and use of Personal Data, including the EU General Data Protection Regulation (“GDPR”), the EU e-Privacy Directive (as well as any successor laws or regulations), and the UK Data Protection Act (DPA) 2018 (as well as any successor laws or regulations to these).

(q) **“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 any Software or the Service or Elo's, Customer's, or End Customer's systems, network, or equipment, including viruses, time bombs, malware, spyware, worms, Trojan horses, or other malicious or disruptive code.

(r) **“OS Update”** means updates to the Android operating system that are part of the Service and that are uploaded to the Portal by Elo that Customer, its Account Users, or designated Administrator may transmit to any Authorized Elo Device. Customer acknowledges that Elo is unable to provide or restore any prior versions of OS Updates.

(s) **“Parties”** means Elo and Customer collectively as the **“Parties”** and each individually as a **“Party”**.

(t) **“Personal Data”** means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a Data Subject as defined by GDPR. “Personal Data” includes equivalent terms in other applicable data privacy laws (“Data Privacy Laws”).



(u) **“Portal”** means the cloud-based location(s) where Elo stores the OS Updates to be accessed by Customer, as agreed between the Parties.

(v) **“Privacy Policy”** means the Elo Privacy Policy, as it may be updated from time to time, and currently posted at www.elotouch.com/privacy-policy.

(w) **“Purchase Order(s)”** means the purchase order(s) that Customer places with an Elo authorized distributor specifying the part number attached to the Service to be provided under the Agreement, the Subscription Term, the number of OS 360 Subscriptions, and the Fees to be paid by Customer.

(x) **“Reseller”** means a reseller, independent software vendor, or similar provider which purchases OS 360 from Elo and provides such Service to its End Customers as part of a bundled package and serves as the End Customer’s point of contact and Administrator with respect to the Service.

(y) **“Service”** means the Elo OS 360 service whereby Elo will deliver OS Updates to Customer with related Elo modifications offered under the Agreement and ordered or subscribed to by Customer and further described in any Documentation.

(z) **“Software”** means any software, Third-Party Application, library, utility, tool, or other computer or program code (including any updates thereto) provided or made available by Elo as well as related website applications made available by Elo (including Elo OS 360), whether installed locally on the Elo Device or otherwise accessed by Customer through the Internet or other remote means (such as website, the Portal, other portals, and cloud-based solutions), including any related Documentation.

(aa) **“Subscription”** means a subscription to use or access the Service per Elo Device, as set forth in the applicable Purchase Order(s).

(bb) **“Subscription Term”** means the term of Customer’s Subscription(s) to access the Service, as designated in the Purchase Order(s).

(cc) **“Territory”** means the United States, the UK, EU, and the European Economic Area (“EEA”).

(dd) **“User Account”** means a sub-Account created by the Account Administrator giving viewing access, OS Update transmissions, and other rights as may be designated by Elo, to the Account.

2. Use of Service.

(a) Service Subscription. By Customer issuing one or more Purchase Order(s), Customer orders the Service listed in the Purchase Order(s) and Elo will deliver such Service and related Documentation in compliance with the Agreement. Customer must use



and access the Service solely in the Territory stated on the Purchase Order(s) during the Subscription Term and for the number of Subscriptions set forth in the applicable Purchase Order(s). The total number of End Customers will not exceed the number set forth in the Purchase Order(s). The Service is designed specifically for use with certain designated Elo Devices and may not perform, or not perform well, with other devices.

(b) License Use Restrictions. Elo hereby grants Customer a limited, temporary, non-exclusive, non-transferable license right to access and use the Service during the Term, solely for the use by Customer and its End Customers, without a right to sublicense, in accordance with the terms and conditions herein. All rights not explicitly granted herein are reserved to Elo.

(c) Use Restrictions. Customer must not, and must cause End Customer not to directly or indirectly: (i) use the Service 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 the Agreement; (ii) interfere with or disrupt the integrity of the Service or any third-party data stored therein, (iii) attempt to gain unauthorized access to the Service or related systems or networks; (iv) use the Service to develop any competing product or service, create benchmark data, reverse engineer, disassemble, or decompile the Service or otherwise copy the Service or any part, feature, function, or user interface; (v) share an Account Administrator or Account User's password with any third party other than with an Account User; (vi) exceed the number of Subscriptions set forth in the Purchase Order(s); (vii) permit direct or indirect access to or use of any Service in a way that circumvents a usage limit hereunder; (viii) make any Service available to, or use any Service for the benefit of any third party other than Customer, the Account Users, or End Customers; (ix) remove or alter any of Elo's or its licensors' restrictive or ownership legends on or in any Software, Service, or Portal, and Customer must reproduce such legends on all copies explicitly permitted to be made, if any. 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 are required for use of the Service. 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.

(d) Additional Terms of Use. The Agreement incorporates by reference the current Elo Privacy Policy located at www.elotouch.com/privacy-policy, and Customer hereby confirms that it has read, understand, and will cause compliance with such terms and such policies by Customer and its End Customers. Certain Service functions may further be subject to Third-Party Application's license terms and End Customer's use thereof is expressly subject to such license terms, which may be accessed through the applicable Third-Party Application provider's site.

(e) Reservation of Rights. Elo reserves all rights not expressly granted to Customer in the Agreement. Except for the limited rights and licenses expressly granted under the Agreement, nothing in the Agreement grants, by implication, waiver, estoppel,



or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Elo IP.

(f) Suspension. Notwithstanding anything to the contrary in the Agreement, Elo may temporarily suspend Customer's access to any portion or all of the Service if: (i) Elo reasonably determines that (A) there is a threat or attack on any of the Elo IP; (B) Customer or End Customer's use of the Elo IP disrupts or poses a security risk to the Elo IP or to any other customer or vendor of Elo; (C) Customer is using the Elo IP for fraudulent or illegal activities; (D) subject to Applicable Law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Elo's provision of the Service to Customer is prohibited by Applicable Law; (ii) any vendor of Elo has suspended or terminated Elo's access to or use of Third Party Applications, or any other third-party services or products required for Elo to provide the Service or to enable Customer to access the Service; or (iii) in accordance with Section 5(a) (collectively, a "**Service Suspension**"). Elo shall use commercially reasonable efforts to provide notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Service following any Service Suspension. Elo shall use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Elo will have no liability for any damage, liabilities, losses (including any loss of use, data, or profits), or any other consequences that the Customer or an End Customer may incur as a result of a Service Suspension.

(g) Usage Responsibilities. Customer will: (i) be responsible for the legality, accuracy, and quality of Customer's Data, including the information that Customer transmits using the Portal and the Service; (ii) use the Service only in accordance with the applicable Documentation and all Applicable Law; (iii) be responsible for all Account Users' compliance with the Agreement and the Privacy Policy; (iv) use reasonable efforts to safeguard and prevent damage to, or loss of, or unauthorized use or access to, the Service and notify Elo promptly of any such damage, unauthorized use, or any suspicion thereof; (v) upload OS Updates as needed; (vi) accept responsibility and any risk associated with uploading OS Updates; and (vii) if Customer subscribes to any Third-Party Application or product that interfaces with the Portal 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 for uploading OS Updates to its End Customers' Elo Devices.

(h) End Customer Information and Data. Customer acknowledges that under the architecture of Elo Devices and the Service, Elo neither controls the distribution of the OS Updates to End Customers nor has access to End Customers. If Customer intends to collect any information or Personal Data from End Customers (collectively, "End Customer Information"), Customer will be the controller of such Personal Data and it is Customer's sole responsibility to comply with all Applicable Laws, including expressly



Data Privacy Laws, with respect to the collection of such End Customer Information. It is Customer's responsibility to obtain any necessary permissions or consents under applicable Data Privacy Laws.

(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 Customer's information, or the use of a hardware device, or otherwise, to analyze the Service 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. In addition, any Personal Data submitted by a Customer will at all times remain subject to Elo's Privacy Policy. While Elo does take measures to protect Customer's personal and business information under such Privacy Policy, Elo has no responsibility and assumes no liability for any of Customer's content, including any loss or damage to such content. Customer is solely responsible for obtaining proper backup of its content and data, keeping passwords secure, and for any and all related activity that occurs in the Account, as well as ensuring sufficient backup procedures are available in the event of the unavailability of the Service.

(j) OS Update Transmission. As part of the Service, only Elo may upload OS Updates to the Portal; Customer may not upload any information to the Portal. Customer will not upload or transmit any Malicious Code via the Service. The upload or delivery of any OS Update using the Service will be done in accordance with the applicable instructions on the Portal and the terms of the 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 Customers, Elo will notify Customer and Customer will immediately address such complaint and follow-up until such complaint has been resolved to Elo's satisfaction.

(k) Sensitive Data/HIPAA. The Parties acknowledge that the Service is not designed to transmit any personally identifiable information ("PII"), such as credit card data, national identity number, and the like. Customer will not upload to the Portal or use it to collect: (i) any PII; or (ii) any patient, medical, or other health-related information, including information regulated by HIPAA (defined below) or any similar Applicable Law; (iii) any other sensitive information subject to regulation or protection under Applicable Law such as the Gramm-Leach-Bliley Act (or related rules or regulations), or (iv) Special Category Personal Data, as defined in GDPR. For purposes herein, the foregoing (i) through (iv) will be collectively referred to as "Sensitive Data." Customer acknowledges that Elo is not acting as Customer's Business Associate or subcontractor (as such terms are defined and used in HIPAA), and that the Service is not HIPAA compliant. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented. Notwithstanding any other provision to the contrary, to the maximum extent permitted by Applicable Law, Elo has no liability for any Sensitive Data.



(l) High Risk Applications. Customer may not use the Service 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).

(m) Processor Obligations. If Customer or any of its End Customers (or any Elo Devices subject to the Agreement) are located in the UK, EU, EEA or Switzerland, the “Personal Data Processing Terms and Conditions” set forth in **Schedule I**, attached hereto and incorporated herein, shall apply.

(n) License to Elo. Customer grants Elo a royalty-free, transferable, nonexclusive right and license in the Territory to use its information 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 the Agreement. To the extent required by this Section, Customer will obtain any required consents of Account Users or End Customers to permit Elo’s use of such information.

3. Customer Obligations.

(a) General. The Customer is responsible and liable for all uses of the Service and Documentation resulting from access provided by Customer, its End Customers, or their agents, subcontractors, consultants, or employees directly or indirectly, whether such access or use is permitted by or in violation of the Agreement. Without limiting the generality of the foregoing, Customer is responsible for all of acts and omissions including any act or omission by Customer or its agents, subcontractors, consultants, employees, or End Customers directly or indirectly, that would constitute a breach of the Agreement. Customer’s responsibilities include, among other things, immediately notifying Elo if there is any change regarding the information provided as part of the Agreement.

(b) Customer’s Acts or Omissions. If Elo’s performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, End Customer, or their agents, subcontractors, consultants, or employees, Elo shall not be deemed in breach of its obligations under the Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer or any End Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.



(c) 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 the 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 Administrator Account 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.

(d) Customer is responsible for: (i) upgrading to the latest Android OS published by Elo within twelve (12) months of it being uploaded by Elo into the Portal in order to continue receiving Elo OS 360 Updates; (ii) administering all Account Users' access to the Service; (iii) maintaining the confidentiality of the password of each Administrator Account and User Account; (iv) maintaining accurate and current account and contact information for each Administrator Account and User Account; (v) ensuring that all use of each Account complies with the Agreement and Applicable Laws; and (vi) 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, DAMAGES, AND EXPENSES.**

4. Elo's Obligations. Customer must provide written notice to Elo if it believes it is experiencing system use issues due to an Elo provided OS Update. Elo will use commercially reasonable efforts to test the applicable OS Update to determine and rectify related errors within ninety (90) days after receiving Customer's written notice. Elo's ability to modify any OS Update is dependent on Elo suppliers (including Third Party Application suppliers) that provide necessary support, including bug fixes, security and feature updates.

5. Changes to Service. Elo reserves the right, in its sole discretion, to change any aspect of the Service or its performance that Elo deems necessary or useful on reasonable notice provided to Customer, via written notice, email, notice in the Portal, or notice at www.elotouch.com, provided that such changes do not detrimentally affect Customer's use of the Service in a material way. Elo may, at its sole discretion, make available to Customer updates to the Service related to, but not limited to, security, patch updates, bug fixes, error corrections, and the like.



6. Payment for Service.

(a) Fees for Service. Customer shall pay the fees specified in the applicable Purchase Order(s) (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 End Customer subscriptions 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.

(b) Invoicing and Payment. The Parties intend that Customer make all payments for the Service through a Distributor, unless otherwise agreed in writing. Elo will not be required to provide any Service if appropriate payment for same has not been received by Elo. Fee charges are made in advance annually unless other billing frequency is explicitly stated in the Purchase Order(s) accepted by Elo.

(c) Suspension of Service and Acceleration. If any amount due under a Purchase Order(s) is thirty (30) or more days overdue, Elo may suspend the Service to Customer until such amounts are paid in full. Elo will endeavor to provide Customer with prompt notice that Customer’s account is overdue.

7. Confidential Information. From time to time during the Term, a Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party(s) at the time of disclosure; (c) rightfully obtained by the receiving Party(s) on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party’s Confidential Information to any person or entity, except to the receiving Party’s employees who have a need to know the Confidential Information for the receiving Party to exercise its/their rights or perform its/their obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required: (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with Applicable Law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party(s) and made a reasonable effort to obtain a protective order; or (ii) to establish a Party’s rights under the Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other



form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire three years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under Applicable Law), such obligations of non-disclosure will survive the termination or expiration of the Agreement for as long as such Confidential Information remains subject to trade secret protection under Applicable Law.

8. Intellectual Property Ownership; Feedback.

(a) Elo IP. Elo respects the intellectual property rights of others and requires that Customer does the same via the Agreement. Elo retains all ownership and intellectual property rights to the Service (subject to any ownership rights of Third-Party Applications). Without limitation, Elo owns the Elo Trademarks (as defined below), the domains, Software and all other content made available through the Portal by Elo, as well as the copyrights in and to the Portal and the technology used in providing the Service. Customer will not acquire any right, title, or interest therein under the 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 the Agreement.

(b) The "**Elo Trademarks**" include but are not limited to the Elo logo, Elo OS 360, and the names Elo, Elo Touch, EloView, and Elo Touch Solutions. The Elo Trademarks and other marks, graphics, logos, icons, and service names related to the Service are registered and unregistered trademarks, or trade dress, of Elo. The Elo Trademarks may not be used without Elo's express prior written permission. Other than the Elo Trademarks, all other trademarks appearing 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) Customer Data. Elo acknowledges that, as between Elo and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Elo a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Elo to provide the Service to Customer.

(d) Feedback. If Customer or any End Customer or any of their employees or contractors provides or transmits any communications or materials to Elo in person, or by



mail, email, telephone, or otherwise, suggesting or recommending changes to the Elo IP or the Service, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (“**Feedback**”), Elo is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Elo on Customer's behalf, and on behalf of its employees, contractors, and/or agents, all right, title, and interest in, and Elo is free to use, without any attribution or compensation to any Party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Elo is not required to use any Feedback.

9. Privacy.

(a) The use of the Service is subject to Elo’s Privacy Policy. If a conflict between the terms of the Agreement and the terms of the Privacy Policy arises, the terms of the Privacy Policy will control. If Elo determines that its privacy safeguards have been breached or violated and Customer’s information has been compromised, Elo will notify Customer and any law enforcement agency or other institution as Elo may be required to notify by applicable Data Privacy Laws (and further subject to **Schedule I** should Customer be located in the UK, EU, EEA or Switzerland). It is Customer’s responsibility to notify Customer’s End Customers. Personal information that Customer may supply to Elo, and any information about Customer’s use of the Service that Elo obtains from Customer, the Account Administration, any Account User or End Customer, including any OS Updates, are all subject to the terms of the Privacy Policy. In addition, Elo email addresses are provided solely for Customer user queries relating to Elo. As such, Elo email addresses may not be used to send unsolicited email. 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.

10. Representations and Disclaimers.

(a) Each Party represents to the other Party that: (i) it has the full right, power, and authority to enter into the Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder; and (ii) when executed and delivered by such Party, the Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(b) CUSTOMER UNDERSTANDS THAT CUSTOMER’S AND END CUSTOMER’S USE OF THE PORTAL AND SERVICE (INCLUDING ANY DOWNLOADS OR ANY LOSS OF DATA OR OTHER DAMAGE TO CUSTOMER’S OR END CUSTOMER’S COMPUTER SYSTEM OR CUSTOMER OR END CUSTOMER’S EXPERIENCE FROM USING THE PORTAL AND SERVICE) IS AT CUSTOMER’S AND END CUSTOMER’S SOLE RISK. CUSTOMER



UNDERSTANDS AND WILL ADVISE END CUSTOMERS THAT THE PORTAL AND SERVICE AND ALL INFORMATION, PRODUCTS, AND OTHER CONTENT (INCLUDING THIRD PARTY SITE INFORMATION, PRODUCTS, AND CONTENT INCLUDED IN OR ACCESSIBLE FROM THE PORTAL 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 PORTAL OR SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. CUSTOMER UNDERSTANDS THAT ELO DOES NOT WARRANT THAT THE RESULTS OBTAINED FROM CUSTOMER’S AND END CUSTOMER’S USE OF THE PORTAL OR SERVICE WILL MEET CUSTOMER’S OR END CUSTOMER’S EXPECTATIONS. NO WARRANTY OF ANY KIND, WHETHER ORAL OR WRITTEN, CAN MODIFY THE TERMS OF THE DISCLAIMER SET FORTH HEREIN. 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 PORTAL AND SERVICE AND ALL INFORMATION, PRODUCTS, AND OTHER CONTENT (INCLUDING THIRD PARTY SITE INFORMATION, PRODUCTS, AND CONTENT) INCLUDED IN OR ACCESSIBLE FROM THE PORTAL AND SERVICE. UNDER NO CIRCUMSTANCE WILL ELO BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY CUSTOMER’S OR END CUSTOMER’S RELIANCE ON INFORMATION OBTAINED THROUGH THE PORTAL OR A LINKED SITE, OR CUSTOMER’S OR END CUSTOMER’S RELIANCE ON ANY PRODUCT OR SERVICE OBTAINED FROM THE PORTAL OR A LINKED SITE.

11. 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 the Agreement infringes or misappropriates such third party’s intellectual property rights (an “**IP Claim**”), 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 IP Claim, provided Customer: (a) promptly gives Elo written notice of the IP Claim, (b) gives Elo sole control of the defense and settlement of the IP Claim (except that Elo may not settle any IP Claim unless the third party 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 the 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 IP Claim arises from a third-party product, service, or application, the combination of such third party offering with the Service or Customer's breach of the Agreement. THIS SECTION 10(a) STATES ELO'S SOLE LIABILITY TO AND CUSTOMER'S EXCLUSIVE REMEDY AGAINST ELO FOR ANY IP CLAIM.

(b) Customer's Indemnification Obligations. Customer will defend, indemnify, and hold Elo and any third party service provider (and all of its or their respective employees, directors, agents, affiliates, and representatives) harmless from any and all claims, liability, damages, expenses, and costs (including reasonable attorney's fees) caused by or arising from Customer's or End Customer's use of or access to the Service, including updating any OS Updates, Customer's (or Account Users') breach or other violation of the terms of the 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(s) (except that Customer may not settle any such claim without Elo's consent unless the third party unconditionally releases Elo of all liability and the settlement does not cause any reputational damage to Elo), and (iii) gives Customer all reasonable assistance, at Customer's expense.

12. Limitations of Liability.

(a) OTHER THAN ITS IP INDEMNIFICATION OBLIGATIONS HEREUNDER, ELO'S TOTAL LIABILITY AND OBLIGATIONS WITH RESPECT TO ANY CLAIM(S) RESULTING OR ARISING FROM OR RELATING TO THE 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 SERVICE DURING THE PRECEDING TWELVE (12) MONTHS.

(b) NEITHER ELO NOR ITS THIRD PARTY SERVICE PROVIDERS 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, OR 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.

13. Term and Termination.



(a) Term. The Agreement will be effective upon the date set forth in Elo's records based on the Purchase Order(s) (the "Effective Date") and will remain in effect until the earlier of the following occurs: (i) the Agreement is terminated in accordance with Section 12 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 Purchase Order(s), Customer's and End 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 Service for an additional period and Customer pays the applicable Fees to continue its use of such Service prior to the expiration of such Subscription Term. Following expiration of a Subscription Term, the Agreement itself will not automatically terminate unless otherwise terminated by either Party in accordance with this Section 12 or as otherwise provided herein.

(c) Termination. Customer may suspend Customer's account or any End 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 the Agreement, without cause or reason, upon no less than fifteen (15) days' prior written notice to Customer, so long as all Subscription Terms will have expired or terminated by the proposed termination date. In addition, any Party may terminate the Agreement in the event another Party breaches or defaults any material term of the 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 End Customer violates the Acceptable Use Policy, Elo may immediately suspend the Service and/or such End Customer's access to the Service. Notwithstanding the foregoing, any Party may terminate the Agreement immediately in the event of a material breach by another Party of its obligations under Sections 7 or 8. If Customer terminates the 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 prepaid paid by Customer.

(d) 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 the Agreement by providing written notice.

(e) Survival. The termination of the Agreement will, as of the effective date of such termination, terminate Customer's and its End Customers' 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 the Agreement will survive the termination of the Agreement: Sections 2, 6-8, 11-12, and 14.

14. Miscellaneous.

(a) Entire Agreement. The Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency or conflicts between the statements made in his Agreement and any other documents incorporated herein by reference or other documents, the Agreement shall prevail.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to Elo at 1755 N. Collins Blvd, Suite 525, Richardson, TX 75080, Attn: General Counsel, and to Customer at its address listed in the Purchase Order(s). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid).

(c) Force Majeure. In no event shall Elo be liable to Customer or any End Customer, or be deemed to have breached the Agreement, for any failure or delay in performing its obligations under the Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Elo's reasonable control, including but not limited to acts of God, flood, fire, earthquake, other potential disasters or catastrophes such as epidemics, pandemics, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, loss of internet connectivity or access to Third-Party Applications by any Party, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(d) Amendment and Modification; Waiver. No amendment to or modification of the Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in the Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith



to modify the Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Governing Law; Submission to Jurisdiction. The Agreement is governed by and is made under the laws of the State of Texas, 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 the Agreement or the Service. Subject to the last sentence of this Section, any claim, dispute, or controversy arising out of or relating to the Agreement, or the Service will be resolved by arbitration in accordance with the provisions of the commercial or business rules of the American Arbitration Association ("AAA"). Notwithstanding the foregoing, a Party may seek preliminary judicial relief (such as a preliminary injunction) from the state and federal courts located in any competent jurisdiction 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.

(g) Assignment. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Customer may not transfer or assign its interests in the Agreement, in whole or in part, without the prior written consent of Elo, which consent shall be in Elo's sole and absolute discretion to grant. Elo has the right to assign and subcontract its interests in and obligations under the Agreement and Customer specifically acknowledges and agrees that Elo may transfer or assign its interests in the to the purchaser of all or substantially all of the capital stock, assets, or business of Elo, or to any other third party (the "**Assignee**"), without the consent of Customer, provided that such Assignee assumes all of Elo's obligations under the Agreement.

(h) Export Regulation. The export and re-export of End Customer's information via the Service may be controlled by the United States Export Administration Regulations or other applicable export restrictions or embargo ("**Export Regulations**"). The OS Updates, Data, Service, 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 at any time to an embargo or sanctions by the United States, and each Party agrees that it will not use such items in violation of any Export Regulations. In addition, Customer must ensure that the Service are not provided, and Elo must ensure that the Data and OS Updates are not provided, to persons on the United States Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals. Each Party 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.



(i) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 7 or 8 would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.



Schedule I

PERSONAL DATA PROCESSING TERMS AND CONDITIONS

If Customer is located in the UK, EU, EEA or Switzerland, the following terms shall apply: (i) Elo will process Customer's Personal Data in accordance with Customer's instructions, which will include processing as necessary to provide the Service contracted for or requested by Customer through use of the Portal; (ii) Customer expressly delegates Elo the discretion to determine the means by which Customer's Personal Data will be processed to provide the Service; (iii) to the extent Customer is submitting the Personal Data of a third party, Customer is solely responsible for obtaining consent to the use of such Personal Data by Elo in accordance with the terms set forth in the Agreement, the Elo Privacy Policy, and Applicable Law; (iv) except as set forth in the Agreement and in the Privacy Policy, Elo will maintain Customer's Personal Data as confidential and will ensure that any subcontractors engaged by Elo who have access to or receive Customer's Personal Data (our "Subcontractors") will also keep Customer's Personal Data confidential on terms substantially equivalent to those set forth herein; (v) Elo will utilize the measures set forth in Section 2(b) of the Agreement for the protection of Customer's Personal Data; (vi) Elo will comply with any request by Customer to access, modify, update, or delete Customer's Personal Data as set forth in the Privacy Policy; (vii) Elo will ensure that any transfers of Customer's Personal Data to any jurisdiction not offering "adequate protection" as defined by the European Commission (or any successor) will be in compliance with applicable EU and Data Protection Law (including the Privacy Shield Principles, if applicable); (viii) should Elo become aware of any unauthorized or accidental access, processing, deletion, loss, or any form of unlawful processing of the Personal Data, Customer will be notified without undue delay and otherwise in compliance with applicable EU and UK Data Protection Law; (ix) Customer hereby authorizes Elo to continue to use the Elo Subcontractors for the provision of the Service as of the Effective Date of the Agreement, a list of which will be provided to Customer upon request; (x) Customer may object to any Elo Subcontractor, however, where the Service cannot be provided without the services of such Subcontractor, Elo may terminate the Agreement in response to such objection; (xi) Elo will be responsible for the compliance by such Subcontractors with the Agreement, and, to the extent required by EU and/or UK Data Protection Law; and finally (xii) at Customer's expense, Elo will provide Customer with reasonable assistance in responding to any requests, investigations, audits, or the like as required under EU and/or UK Data Protection Law.