

# ELITE MASTER TERMS

## 1. GENERAL

- 1.1 These Master Terms (the "Master Terms") are applicable to any Order Form (each, an "Order Form") issued by Sky UK New Co Limited or any of its subsidiaries or affiliates ("Elite") to the customer listed in the Order Form ("Customer") to provide access to the products and services identified therein (the "Services") and to Customer's use of the Services.
- 1.2 Parties. Each party and any entity that is directly or indirectly owned by such party (an "Affiliate") may enter into Order Forms which are governed by the Master Terms. Where an Order Form is entered into by an Affiliate, references in the Order Forms governed by these Master Terms, and other Schedules, exhibits or addenda referred to or incorporated in them, each between the same parties (collectively, the "Agreement") to "Elite" refer to Elite's Affiliate to the extent it is performing under the Order Form, and references to "Customer" refer to the customer that has executed these Master Terms or any Order Forms and such customer's Affiliate and "parties" or "party" shall be construed accordingly. All Order Form(s) executed by the same entities, together with the Master Terms, collectively comprise a single Agreement between such entities only. Accordingly, one or more separate Agreements may be created, each governed by the same Master Terms.
- 1.3 Precedence. If there is any conflict among any elements of the Agreement, the descending order of precedence will be (unless expressly stated otherwise for any particular terms): Order Form, Annexes, Schedules, Master Terms (excluding the Annexes and Schedules). Clause 7 (Third Party Providers) takes precedence over any conflicting terms of the Agreement.

**2. GRANT OF LICENSE.** Subject to the terms and conditions set forth herein, Elite grants to Customer, and its authorized Users, as listed in the relevant Order Form, for the term of the applicable Order Form, a limited, non-exclusive, non-sublicensable, non-transferable and revocable license to access the Service(s) pursuant to the terms and conditions set forth in these Master Terms. All rights not expressly granted to Customer and its Users pursuant to the Master Terms are reserved to Elite. "Users" shall mean

any individual who is authorized to access any Service pursuant to an Order Form. If a relevant Order Form references a "Timekeeper," such term shall mean "any active person who generates revenue for the Customer, including but not limited to any active fee earner, who is measured, tracked or recorded by timecard, charge card, cost card, fixed fees or charges." Timekeepers shall constitute Users for purposes of these Master Terms.

**3. TERM** The Master Terms shall commence on the Effective Date specified in the relevant Order Form (the "Effective Date") and remain in force during the term of any Service that Elite supplies pursuant to an Order Form. The initial term of each Agreement shall be specified in the relevant Order Form. Each initial term shall automatically renew for additional one-year periods, unless one party gives the other at least six months' notice prior to the end of the then-current term (each, a "Term").

## 4. CHARGES

- 4.1 Payment of Charges. Unless stated otherwise in an Order Form, Customer will pay the fees Elite charges for the supply of a Service as specified or referred to in the relevant Order Form(s) or related Schedules (the "Charges") that are not the subject of a good faith dispute within 30 days of the date of the invoice, which shall be delivered on an annual basis commencing on the Initial Term Start Date that is set forth in the relevant Order Form, and without set-off, counterclaim or deduction. Customer agrees to notify Elite or its agent of any disputes within 15 days of the date of invoice. Where permissible by law, Elite may apply a service charge of 1% per month or the highest lawful interest rate (whichever is lower) to all amounts not paid to Elite when due.
- 4.2 Payment of Taxes. The Charges are exclusive of taxes, and Customer will also pay applicable taxes and duties (including withholding taxes, value added tax (VAT), or other taxes but excluding taxes imposed on Elite's net income). Customer will provide to Elite written evidence of any withholding tax paid by Customer or any tax exemption on which Customer wishes to rely. If Customer is obliged to withhold or deduct any portion of the Charges, then Elite shall be entitled to receive from Customer such amounts as will ensure that the net receipt, after tax and duties, to Elite in respect of the Charges is the same as it would have been had the payment not

been subject to the tax or duties.

- 4.3 Changes to Charges. Elite may increase or adjust the basis for calculating the Charges in any renewal term with effect from the start of any such renewal term by giving Customer at least 90 days advance written notice.
- 4.4 Excess Use. Access to the Services is limited to the scope set forth on the applicable Order Form. In the event that the Customer's scope of use exceeds the limits set out in the Order Form (such as amount of usage, the number of Users, transactions (including returns), content, entities, and/or territories) Elite shall be entitled to charge additional Charges for the excess use at the rates set out in the Order Form or at the then current Elite pricing, whichever is greater, to the extent that such pricing has not been set forth in an existing Order Form.
- 4.5 Changes of Customer. If Customer undertakes any reorganization (including without limitation, any acquisition or merger), the parties agree the Charges will be revised to account for the subsequent increased value derived or scope of use within the terms of the applicable license.

**5. PERFORMANCE.** Elite will provide the Services to Customer using reasonable skill and care and in accordance with industry standard practices. Elite will provide, and Customer will use, the Services in accordance with (a) the usage instructions and operating specifications to run or access the Service and (b) applicable laws and regulations.

## **6. USAGE PERMISSIONS AND RESTRICTIONS**

- 6.1 Usage. Elite permits Customer to use the Services within the scope of use set out in the Master Terms and the relevant Schedule and/or Order Form. Any materials, such as software, hardware and related documentation supplied by Elite or its Affiliates (the "Materials") and communications facilities or networks provided by Elite in connection with the Services may only be used to access the Services and benefit from the rights granted under the Agreement. Elite may make available to Customer an open API to achieve interoperability between a Service and any other software applications or technology, which Customer may use where applicable, subject to Elite's then current Charges (if any) for such APIs. If Customer is a professional firm in the business of providing audit, tax, accounting, or legal services to its clients, this Agreement does not preclude Customer from using the Services for the purpose of advising its clients.

## 6.2 Usage Restrictions.

- a) Customer will not: (i) copy or modify any part of the Services; (ii) use or provide the Services on a white-labelled/re-branded basis, or otherwise, for the benefit of any third party (other than third parties to the extent they are expressly permitted under the Agreement to receive access to the Services); (iii) use any Materials, or communications facilities or networks provided by or on behalf of Elite, other than to receive and properly use the Services; or (iv) merge, decompile, disassemble, or reverse-engineer software (except as expressly permitted by law or regulation to achieve interoperability with other technology where such rights cannot be modified by agreement) or change the filename of software.
- b) Any Information, Materials or other rights provided with a Service are non-transferable and non-sublicensable by Customer. Customer shall not provide any Information to any third party without Elite's prior, written consent. "Information" means the information (including, but not limited to, data, text, images and sound recordings) contained in the relevant Service in raw form and such information as it may be modified by Customer, except to the extent that the modified information is modified by Customer (e.g. performing calculations or combining it with other data) to such a degree that it cannot be recognized as deriving from the Information, reverse engineered or otherwise traced back to the Information, without an extraordinary amount of time and effort other than by the creator. All other information that does not satisfy these criteria constitutes "Information". Unless previously authorized by Elite, Customer must not (i) run or install any computer software or hardware on Elite Services or networks; (ii) use any technology to automatically download, mine, scrape or index any Information; or (iii) automatically connect (whether through APIs or otherwise) any Service to other data, software, services or networks.
- c) Notwithstanding anything to the contrary in this Agreement, Customer and any third-party are prohibited from accessing or utilizing Elite's proprietary code or private APIs for any purpose.

## 7. THIRD PARTY PROVIDERS.

- 7.1 In the event Customer requests in connection with its use of the Services hereunder that Elite accept, use, or procure any data, software or services from a third party (other than an Affiliate) (a "Third Party Provider"), whose information, materials, or services are subject to separate third party terms, Customer agrees to comply with all such applicable third party terms and conditions and to reimburse Elite for the costs thereof unless otherwise agreed in writing by the parties. Customer further agrees that notwithstanding anything else contained in the Agreement to the contrary, Elite will have no liability resulting from the Third Party Provider terms, conditions or requirements except as otherwise agreed in writing in advance by Elite. No such Third Party Providers will have any rights or remedies under the Agreement unless otherwise agreed in writing in advance by Elite. Elite shall not be required to accept, and will not be deemed to have accepted, requests related to Third Party Providers, without Elite's consent.

## 8. INTELLECTUAL PROPERTY

- 8.1 Services. Customer acknowledges that, as between the parties, all database rights, moral rights, the rights in and to patents, trademarks, service marks, trade and service names, copyrights, know-how and trade secrets, and all rights or forms of protection of a similar nature whether now existing or hereafter arising (the "Intellectual Property Rights") in the Services (including Information and Materials) are (a) owned by Elite, its Affiliates or Third Party Providers, and (b) hereby reserved to Elite unless specifically granted in the Agreement. Customer will not remove or conceal any proprietary rights notices in the Services and will include such notices on any copy it is permitted to make.
- 8.2 Customer Materials. Elite acknowledges that, as between the parties, all Intellectual Property Rights in the information, software, or other materials provided to Elite by or on behalf of Customer, which Elite is required to host, use or modify in the provision of a Service (the "Customer Materials") are owned or licensed by Customer. Customer grants Elite permission to use, store and process Customer Materials in accordance with applicable law. Access and use of Customer Materials by Elite, its employees and contractors will be directed by Customer and limited to the extent necessary to deliver the Services, including training, research assistance, technical support and other services. Elite may delete or disable Customer Materials if required under applicable

laws, and in such instances Elite will use reasonable efforts to provide notice to Customer. If Customer Materials are lost or damaged, Elite will assist Customer in restoring Customer Materials from the last available back up copy.

- 8.3 Use of Name. Other than as necessarily required for the provision of the Services, neither party may use the other party's name, trademarks or any derivatives of them, except for internal purposes or as required by law or regulation, without the other's prior written consent, not to be unreasonably withheld.

## 9. SECURITY

- 9.1 Where Services are provided to a User, concurrent usage or sharing of Services between Users is not permitted. However, Customer can transfer a Service from one User to another in the same country who is employed by Customer by notifying Elite. Access to the Services may be subject to using passwords, smartcards, or other security devices ("Security Credentials") provided by Elite. Such Security Credentials must not be shared.
- 9.2 Elite may change Security Credentials with notice to Customer or Customer's Users for security reasons. Each party will use reasonable efforts to scan the Services and its related systems for any code or device which is designed or intended to impair the operation of any computer or database or prevent or hinder access to, or the operation of, any program or data, using detection software generally accepted in the industry.
- 9.3 Elite shall comply with the terms of Elite's Data Security Addendum, which can be found at [assets.elite.com/Data\\_Security\\_Addendum.pdf](https://assets.elite.com/Data_Security_Addendum.pdf).

## 10. TERMINATION AND CONSEQUENCES OF TERMINATION

- 10.1 Obsolescence. Elite may obsolete: (a) a prior version of a Service with reasonable prior notice following the general availability of an update or upgrade (whether designated with the same Service name or not), and (b) any Service as a whole on at least six months' prior notice; provided that, such obsolescence on a whole shall not occur during the initial term of any applicable Order Form. Elite will have no obligation to provide or support obsolete Services or versions of Services at the end of such notice periods. In the case of a version obsolescence described in (a), the term of the affected Service will continue unless, where the new version is subject to additional Charges, Customer may terminate the Service by providing Elite with 30 days' notice after the date of Elite's notice. In the case of Service obsolescence described in (b), the Service will terminate and Customer will be entitled to a pro-rata refund

pursuant to Section 10.5 below.

- 10.2 **Termination for Breach.** Either party may terminate the Order Form for applicable Services under the Agreement, upon notice, if the other party materially breaches the Agreement with respect to such Service(s) and the breach (a) remains unremedied 30 days after the date of notice to the breaching party from the other party describing the breach and requiring it to be cured, or (b) is incapable of being cured.
- 10.3 **Termination for Insolvency.** Either party may terminate the Agreement, immediately upon notice, if: (i) the other party enters into a composition with its creditors; (ii) a court order is made for the winding up of the other party; (iii) an effective resolution is passed for the winding up of the other party (other than for the purposes of amalgamation or reconstruction); (iv) the other party has a receiver, manager, administrative receiver or administrator appointed with respect to it, (v) the other party ceases to be able to pay its debts as they fall due; or (vi) the other party takes or suffers any action similar to any of the above on account of debt in any jurisdiction.
- 10.4 **Injunctive Relief.** Nothing in this Agreement prevents Elite or Customer from seeking an immediate injunction or similar remedy from a court of competent jurisdiction to prevent or restrain breaches of the Agreement.
- 10.5 **Refunds.** Where Elite terminates a Service other than under clauses 10.2 (Termination for Breach) or 10.3 (Termination for Insolvency), or Customer terminates a Service pursuant to the terms of this Agreement, Customer will be entitled to a pro rata refund of any recurring Charges that Customer has paid in advance for the terminated Service.
- 10.6 **Delete or Return Information and Materials.** Following termination, and at any time at a party's request, with respect to Confidential Information, and subject to the remainder of this clause 10.6, the other party will promptly return, delete or destroy the requesting party's Confidential Information. However, each party may retain copies to the extent required by, and used only to (i) comply with, law or regulation, and (ii) support the enforcement or defense of a party's rights under the Agreement. Elite will not be required to return, delete or destroy any feedback or information created by Elite customers and provided to Elite, and accepted by Elite, for inclusion in any service of Elite or its Affiliates for distribution to its customers (the "Contributed Data") contributed by Customer's Users to any Service. "Confidential Information" means information in any form, whether oral or written, of

a business, financial or technical nature which the recipient reasonably should know is confidential and which is disclosed by a party in the course of the Agreement but excluding Contributed Data.

- 10.7 **Survival of Terms.** Termination of all or any part of the Agreement will not affect a party's respective accrued rights and obligations. The following clauses will survive termination: 4.1 (Payment of Charges), 4.2 (Payment of Taxes), 10.5 (Refunds), 10.6 (Delete or Return Information and Materials), 10.7 (Survival of Terms), and 11-12 (Confidentiality and Data Privacy) and 13-15 and 18 (Disclaimers; Limitation of Liability; Indemnity and Miscellaneous), and Customer's obligations under 16.4 (Tranch) along with any others that by their nature should survive.
- 11. CONFIDENTIALITY.** All provisions of these Master Terms and Confidential Information of each party shall be kept strictly confidential by the other party and may not be disclosed without prior written consent, except for any disclosure required by order of a court or governmental authority with jurisdiction over such other party.
- 12. DATA PRIVACY**
- The parties agree that the terms of the Data Processing Addendum ("DPA"), which can be found at <https://www.elite.com/resources/elite-customer-dpa.pdf>, shall apply to the extent Elite Processes Customer Personal Data (as those terms are defined in the DPA), in which case the DPA is hereby incorporated into the Agreement by this reference. Customer agrees not to provide Elite or use the Services in connection with any sensitive personal data or protected health information or other information that can be deemed sensitive personal data or protected health information without obtaining Elite's prior written consent and entering into a separate agreement with Elite governing the transmission of such information in connection with Customer's use and benefit of the Services. Customer may not attempt to probe, scan, penetrate or test the vulnerability of an Elite system or network, or to breach the Elite security or authentication measures, whether by passive or intrusive techniques, without our prior written consent and entering into a separate agreement with and acceptable to Elite governing the scope, and containing appropriate restrictions and requirements for any such penetration testing.
- 13. DISCLAIMERS**
- 13.1 **General Disclaimer.** All warranties, conditions and other terms implied by statute or common law including, without limitation, warranties or other terms as to suitability, merchantability,

**satisfactory quality and fitness for a particular purpose, are excluded to the maximum extent permitted by applicable laws. Unless expressly provided, the Services are delivered “as is” without warranty of any kind and Elite does not warrant or represent that the Services (or services, information or material supplied to Elite on which all or part of a Service depends) will be delivered free of any inaccuracies, interruptions, delays, omissions or errors (“Faults”), or that all Faults will be corrected. Unless otherwise expressly stated in the Agreement, Elite shall not be liable for any loss, damages or cost (collectively, “Damages”) resulting from any such Faults. Customer assumes sole responsibility and entire risk as to the suitability and results obtained from use of the Services, and any decisions made or actions taken based on the information contained in or generated by the Services. Customer is solely responsible for the preparation, content, accuracy and review of any documents, data, or output prepared or resulting from the use of the Services. In no event shall Elite or its Third Party Providers be liable for any penalties, interest, taxes or other amounts assessed by any governmental or regulatory authority.**

- 13.2 No Advice. Customer understands that Elite is an aggregator and provider of information (including opinions) for general information purposes only and does not provide financial, tax and accounting, medical, legal or other professional advice. Some Information may contain the opinions of third parties, and Elite is not responsible for these opinions. Likewise, Elite is not responsible for any Damages resulting from any decisions of Customer, or anybody accessing the Services through Customer, that are made in reliance on the Services, including decisions relating to the sale and purchase of instruments or legal, tax and accounting, compliance, financial and/or risk management decisions. Customer agrees that it uses the Services at its own risk in these respects.

#### **14. LIMITATION OF LIABILITY**

- 14.1 Unlimited Liability. The limits on liability in clause 14.2 (Liability Cap) do not apply to: (a) a party's fraud, fraudulent misrepresentation, willful misconduct, or conduct that demonstrates a reckless disregard for the rights of others; (b) negligence causing death or personal injury, (c) any indemnification obligations, other than to the extent described in clause 15.2 (Third Party Limitation), Elite's infringement of Customer's Intellectual Property Rights in the Customer Materials, or (e) Customer's liability to pay the Charges and any

amounts Elite would have charged for use of the Services beyond the usage permissions and restrictions granted under the Agreement. Nothing in this Agreement limits liability that cannot be limited under law.

- 14.2 Liability Cap. Each party's aggregate liability to the other in any calendar year for Damages (in contract, tort including negligence or otherwise) arising out of or in connection with the Agreement will not exceed the Charges payable by Customer to Elite for the applicable Service(s), excluding professional services, which forms the basis for the claim(s) during the 12-month period immediately preceding the incident (or the first incident in a series) giving rise to any claim for those Damages.
- 14.3 Exclusions. Neither party will be liable for any: (a) indirect, incidental, punitive, special or consequential Damages arising out of or in connection with the Agreement; (b) loss of data (except that Elite shall be liable to restore data from any available back-ups); or (c) loss of profits (except with respect to the Charges); even if such Damages or losses in (a)-(c) could have been foreseen or prevented.
- 14.4 Force Majeure. Neither party will be liable for any Damages or failure to perform its obligations under the Agreement due to circumstances beyond its reasonable control. If such circumstances cause material deficiencies in the Services and continue for more than 30 days, either party may terminate any affected Service upon notice to the other party.

#### **15. INDEMNITY**

- 15.1 Elite Indemnity. Elite will indemnify Customer against Damages Customer incurs as a result of any third-party claim that the Services infringe the Intellectual Property Rights of a third party in the locations where Customer is permitted by Elite to use the Services, except if the Damage results from: (a) the combination of all or part of the Service with other products or technology not supplied by Elite; (b) modification of all or part of the Service other than by Elite or its subcontractors; (c) use of a version of the Service after Elite has notified Customer of a requirement to use a subsequent version; or (d) Customer's breach of the Agreement. This indemnity will extend to Customer's Affiliates to which Customer makes the Services available in accordance with the Agreement.
- 15.2 Third Party Limitation. Where the indemnity obligation in clause 15.1 (Elite Indemnity) arises from Information or Materials Elite obtained from a Third Party Provider, Elite's monetary liability to Customer will be limited to the amount Elite recovers from the relevant Third Party Provider, divided by the

number of other actual or potential claims by Elite customers (including Customer) against Elite arising from those Information or Materials.

15.3 Elite's Remedial Options. Elite may remedy any alleged or anticipated infringement of a third-party Intellectual Property Right by:(a) procuring the right for Customer to continue using the Service in accordance with this Agreement or (b) replacing affected Information and/or Materials with replacement(s) that do not alter the fundamental

15.4 Customer Indemnity. Customer will indemnify Elite and its Affiliates against Damages they incur arising out of or in connection with a third party claim, or a regulatory fine or penalty, connected to: (a) an allegation that their use of Customer Materials infringes the Intellectual Property Rights of a third party (except to the extent of any indemnity Elite provides under clause 15.1 (Elite Indemnity)); (b) Customer's, its customers or clients (including Customer's provision of its services to its customers or clients), its Affiliates' or their sub-contractors' use of the Services, including communications and networks, in breach of the Agreement; (c) Elite's compliance with any instruction given by Customer to Elite in the course of the provision of Services; or (b) an assertion by any person accessing or receiving the benefit of any part of a Service through Customer.

15.5 Conduct of Claims. The indemnification obligations in clause 15 are conditioned on the indemnified party: (a) providing the indemnifying party with prompt notice of the details of the claim and, if the indemnifying party requests it, control of the claim; (b) co-operating, at the indemnifying party's or relevant Third Party Provider's expense, in the defense or prosecution of the claim; and not making any admission or taking steps to settle any claim without the indemnifying party's prior written approval. The indemnified party may participate, at its expense, in the defense of any such claims through legal counsel of its choice.

## 16. PRODUCT AND SERVICE SPECIFIC TERMS

16.1 In the event that Customer has licensed the Service known as "**eBilling Hub**," the following terms shall apply:

- a) Elite shall invoice Customer for any unique invoice number uploaded to the eBillingHub system (each, an "E-Bill") generated by Customer that exceeds the number of E-Bills listed in the relevant Order Form and Customer shall pay the Charges set forth on any such invoices in accordance with these Master Terms.
- b) Elite is not responsible for the security of the transmission of PDF E-Bills or the transmission, or

failed transmission, of PDF E-Bills to Customer's recipient. Elite will only store PDF E-Bills for 7 days after the recipient has opened them or 30 days after submission if the recipient does not open them. After such time period, PDF E-Bills will be removed from Elite's systems.

16.2 In the event that Customer has licensed the Service known as the "3E Cloud Service," the following terms shall apply:

- a) Customer must set up Azure Active Directory for access to the 3E Cloud Service. 3E Cloud Service Charges include Charges for up to a terabyte of data storage. Data storage in excess of a terabyte is subject to Additional Charges, which shall be negotiated by Elite and Customer.
- b) Elite shall only be required to provide Customer with access to one sample instance and one final, production instance of the 3E Cloud Service.
- c) Support for the 3E Cloud Service shall occur in accordance with the terms of Elite's Service Level Agreement that is referenced in the relevant Order Form.

16.3 In the event that Customer has licensed the Service known as "**Elite Validate**," the following terms shall apply:

- a) Customer acknowledges and agrees that any data required for Elite to fulfill its obligations under the Agreement with the Customer is collected for the sole purpose of providing the Elite Validate services. Elite will not use the Data for any purpose other than as necessary or required to deliver services under the Agreement.

16.4 In the event that Customer has licensed the Service known as "**Tranch**," the following Tranch-specific terms (Sections 16.4 through 20.3) shall also apply:

- a) **Invoice Automation:** By signing the relevant Order Form for invoice automation services, Elite shall invoice Customer for any unique invoice generated ("Invoices") and sent via the Tranch system by Customer that exceeds the number of invoices listed in the relevant Order Form and Customer shall pay the Charges set forth on any such invoices in accordance with these Master Terms.

## 17. Pay Now:

- a) By signing the relevant Order Form, Customer agrees to participate in the Elite's "Pay Now" service. Pay Now allows the Customer to offer Customer's own clients ("Client") the ability to pay Customer for any Client invoices via a one-time payment of the full Client invoice ("Transaction"). In order to do the Transaction, Elite must have both a valid Authorization from Customer's Client and a valid ACH Authorization from Customer, each as more particularly described below. Customer shall initiate all Transactions through the

Payment Network designated by Elite, subject to the terms and conditions below.

- b) Client's Authorization: prior to any Transaction, Elite must receive a prior consent from Client ("Authorization") authorizing Elite's Third Party Service Provider (defined below) to debit a bank account designated by Client ("Client Bank Account") for purposes of the Transaction. Such Authorization is solely for the purpose of obtaining Client's consent to debit the designated Client bank account for purposes of the Transaction. The Authorization does not imply, and Elite does not guarantee, that sufficient funds will be available based on such Authorization or that timely payment is made to or for the benefit of Customer.
- c) Customer's ACH Authorization: prior to any Transactions, Customer shall execute an ACH authorization form, in such form and substance reasonably requested by Elite (the "ACH Authorization") allowing Elite's Third Party Service Provider or Bank (defined below) to credit or debit Customer's bank account designated in the ACH Authorization for purposes of the Transaction, including any Chargebacks (defined below) related thereto, all in accordance with the applicable Order Form.
- d) ACH Network: Customer acknowledges and agrees that all Transactions must be submitted via a payment network designated by Elite (currently Fed Now or Real-Time Payment Network) (the "ACH Network"), and must be executed in compliance with the Nacha Operating Rules and any other rules or requirements applicable to the Transaction.
- e) In order to collect funds via ACH Debit Transactions (as defined by the Nacha Operating Rules) and as required by the Nacha Operating Rules, Customer shall promptly provide information and documentation reasonably requested by Elite, Elite's Third Party Service Provider, or ODFI Banks for the purpose of ensuring Customer's compliance with these Terms and the Nacha Operating Rules. Customer further agrees to cooperate with Elite's request for information necessary to complete ACH risk assessments and audits in a timely manner. Elite may immediately suspend or terminate Customer's access to the ACH Network or any other part of Elite's Services if Customer fails to provide information or documentation requested or otherwise comply with this Section 16.4.
- f) Customer shall not submit ACH Network Transactions as a Nested Third Party Sender (as defined in the Nacha Operating Rules) through Tranch services at any time.
- g) FBO Account: Elite will designate a third party service provider selected by Elite (the "Third Party Service Provider") to debit the Client Bank Account and transmit funds to an account held at an insured depository institution ("Bank") established and maintained exclusively for the benefit of Elite ("FBO Account"). Customer acknowledges and agrees that such funds are not subject to FDIC pass-through deposit insurance. The Third Party Service Provider will maintain for Customer a unique sub-account (with appropriate ledger entries) in connection with the FBO Account. Customer acknowledges and agrees that Elite shall not hold, have access to, or exercise any control over the FBO Accounts (including the Customer's sub-account) at any time; rather the Bank will, at all times, hold and have access to and control over the FBO Accounts (including the Sub-accounts). At no time shall Elite be considered, actually or constructively, to control or possess Customer funds while they are credited to and held in the FBO Accounts (including the Sub-accounts). Customer acknowledges and agrees that the Bank shall be solely responsible for all Customer funds held in FBO Accounts (including the Customer's sub-account). Customer acknowledges and agrees that Bank has no obligation to check, verify, or review Elite's instructions.
- h) Customer represents, warrants and undertakes through the Term of the Agreement that: (i) in receiving the Pay Now service, Customer is acting solely in the exercise of its commercial occupational activity and that the Pay Now service will not be used for any other purposes; (ii) Customer may not resell the Pay Now service, in whole or in part, or otherwise allow the use of the Pay Now service by any third parties; and (iii) Customer shall not use Pay Now for the payment of products/services not agreed to in writing in advance between Elite and Customer.
- i) Without limiting Elite's rights to terminate or suspend Customer's access to the Services, Elite may also terminate or suspend Customer's access to the ACH Network for violation of the Nacha Operating Rules, including if an ODFI Bank requires Customer's suspension or termination, if Customer exceeds acceptable limits on returns, or if Customer fails to timely pay Elite in full for any of the payments contemplated herein.
- j) Customer shall be responsible for the on-boarding of Clients for purposes of the Transaction. Customer and any relevant entities receiving payments must satisfy Elite's "Know Your Business" ("KYB") procedures at all times during the Term in order to be eligible to use the Services and shall provide to Elite all information requested by Elite for such purpose. Customer represents and warrants that any information that Customer provides to Elite about Customer's business is for purposes of Company's KYB review is accurate and complete, and Customer will keep this information

up to date at all times. Failure to do so may result in termination of this Agreement by Company.

- k) Customer shall be fully liable and indemnify Elite for the non-execution, delayed or defective execution of a Transaction. Notwithstanding the foregoing, where legally required, Elite will initiate a Refund for the amount of the non-executed or defective Transaction.
- l) Customer acknowledges and agrees that as the Bank does not maintain an "account" for Clients within the meaning of 12 CFR Part 1005 – Electronic Fund Transfers ("Regulation E"), transfers to and from the FBO Accounts are not subject to the error resolution procedures under Regulation E.
- m) Elite and/or the Bank may establish cutoff times for receipt of instructions from time to time in their sole discretion. Elite is not responsible for the accuracy or integrity of any instructions provided by either the Customer or the Client. Customer shall be responsible for any errors or omissions in any instructions caused by the Customer, its systems, or its agents or representatives. Customer is responsible for any errors and any losses, liabilities, damages, costs and expenses, including reasonable attorneys' fees and expenses solely and directly resulting from incomplete and/or inaccurate information provided by Customer to Elite relating to the Transaction or an unauthorized or otherwise flawed, incorrect, or erroneous request to disburse funds from the applicable FBO Accounts (including the disposition, failure to disburse, or misdirection of funds resulting from providing inaccurate or incomplete information relating to disbursements).

#### **18. Pay by Card:**

- a) By signing the relevant Order Form, Customer agrees to participate in the Elite's "Pay by Card" service including "Virtual Card Terminal" (the enablement of Customer users to process accounts payable card payments on behalf of Clients through the Platform). In order to receive this additional functionality, Customer acknowledges and agrees that Customer may be required to enter into a direct contractual relationship a payment facilitator (the "Payment Facilitator" chosen by Elite and which may change from time-to-time, including by signing a Payment Facilitator's Sub-Merchant Terms and Conditions, completing a PCI-DSS self-assessment within sixty (60) days of signing the relevant Order Form, and agreeing to Terms and Conditions of Use provided by the payment facilitator (the "Payment Facilitator Agreements").
- b) Elite may disable "Pay by Card" functionality in whole or in part in Elite's sole discretion at any time, including, but not limited to, upon termination or suspension of any of the Payment Facilitator Agreements to which Customer is a party.

- c) Customer represents and warrants to Elite, as an Originator of Transactions made under the Nacha Operating Rules, that no Transaction delivered to Elite, will cause Elite, its Third Party Service Providers, Bank (including any ODFI Banks) to be in violation of any regulation or sanction administered by a Governmental Authority or otherwise cause Elite, its ACH Service Providers, or ODFI Banks to be in violation of any laws of the United States or any other country, that Customer has the authority to request the Transaction and that the ACH Authorization is valid and accurate in all respects.

#### **19. Chargebacks and Refunds**

- a) For purpose of the Pay Now and Pay by Card service, the following definitions apply:
  - i. "Chargeback" means a Transaction which is successfully charged back or reversed, in whole or in part, by the Issuer on request of the Client resulting in cancellation of a Transaction in respect of which the Customer has been paid or was due to be paid, notwithstanding any Authorization. Elite will provide a notification to the Client within two (2) business days of a Chargeback occurring.
  - ii. The Customer agrees that it is solely responsible for and indemnifies Elite in respect of any and all Chargebacks associated with the Pay Now or Pay by Card service. Each Chargeback represents a debt immediately due and payable to Company on demand on its occurrence notwithstanding any expiration or termination of this Agreement or the Pay Now or Pay by Card service. Any Chargebacks for which the Customer is required to reimburse Company shall correspond to the whole or part of the processing value of the original Transaction, as applicable. Funds will be either set-off against future payouts or Elite will debit the Customer's designated bank account.
  - iii. Elite is not obliged to investigate the validity of any Chargeback by any Issuer, or other third party authorized by law to make such determination, whose decision or determination shall be final and binding in respect of any Chargeback. If a Chargeback occurs for a Transaction in respect of which the Customer has already received a Payout of the related funds, this results in the unconditional obligation for and liability of the Customer to immediately return an amount equivalent to Payout for that Transaction to Elite in addition to any Chargeback or other associated costs.
  - iv. As Chargebacks may arise a considerable period after the date of the relevant Transaction, the Customer acknowledges and agrees that, notwithstanding any termination of this Agreement for any reason, Elite shall remain entitled to recover Chargebacks, Assessments, and Chargeback and Assessment Costs from the Customer.
  - v. "Refund" means a full or partial reversal of a

particular Transaction where the funds are reimbursed to the Client by the Customer.

## 20. Pay Later

- 20.1 By signing the relevant Order Form, Customer agrees to participate in the Elite's "Pay Later" service. Pay Later allows the Customer to offer Clients the ability to pay Client invoices via installments, whilst receiving payment for said invoice upon signing of a relevant finance agreement by the client. Elite may contract with third party service-providers ("Lender") to enable such functionality.
- 20.2 As part of the Services, the Lender shall:
  - a) Determine whether it can approve the Customer's Client for a Loan at its sole discretion.
  - b) Carry out its own Know Your Business, Know Your Customer, PEPs/Sanctions checks and all other AML/BSA/OFAC or similar requirements on the Client as required by all applicable legal requirements and Lender's policies.
  - c) Make payments to the relevant Customer bank account(s) as set forth in the Client's invoices.
- 20.3 After agreeing to provide Services to a Client, the Lender assumes all risk of non-payment of all Loans.

## 21. Hourly Service Fees

- a) Service dates that are cancelled by Customer less than 10 business days prior to its scheduled date will be invoiced to Customer at 50% of Elite's then-current price. If Customer cancels a service date less than 10 days prior to the scheduled date, any non-refundable travel expenses associated with such cancellation will be charged to Customer.
- b) Should Customer delay start of Services 1 year beyond the Effective Date, Elite reserves the right to adjust Customer's Service Fees to Elite's then current service rate.

**22. Non-Solicitation.** Customer agrees that, during the Term and for twelve months (12) thereafter, it will not, without the prior written consent of Elite, directly or indirectly employ or engage or solicit for employment or engagement any employee of Elite that has provided services to Customer pursuant to this Agreement; provided that, Customer shall not be in breach of this clause if such employment results from a response to a general public advertisement for employment or talent search engagement not specifically targeted at the relevant employee.

## 23. MISCELLANEOUS

- 23.1 Choice of Law and Jurisdiction. The Agreement and any dispute or claim arising out of or in connection with the Agreement will be governed by and construed in accordance with the laws of England and Wales, without giving effect to the England and Wales conflict of laws rules to the extent those rules would require applying another jurisdiction's laws. Each party hereby consents to the non-exclusive jurisdiction of the courts of England and Wales to settle all disputes or claims arising out of or in connection with the Agreement.

- 23.2 Assignment. Neither party may assign or transfer (by operation of law or otherwise) any right or obligation under the Agreement without the other party's prior written consent, which may not be unreasonably withheld or delayed. Any assignment in violation of this clause shall be null and void. However, Elite may, without Customer's consent, assign the Agreement or any rights granted in the Agreement, in whole or part, either (a) to an Affiliate; (b) in connection with Elite's or an Affiliates' sale of a division, product or service; or (c) in connection with a reorganization, merger, acquisition or divestiture of Elite or any similar business transaction.

- 23.3 Severability. If any part of the Agreement that is not fundamental is illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it legal and enforceable. If such modification is not possible, the part will be deemed deleted. Any such modification or deletion will not affect the validity and enforceability of the remainder of the Agreement.

- 23.4 No Waiver. If either party delays or fails to exercise any right or remedy under the Agreement, it will not have waived that right or remedy.

- 23.5 Entire Agreement and Non-Reliance. The Agreement contains the entire understanding between the parties regarding its subject matter and supersedes all purchase orders or other form(s) used by the Customer, and any prior agreements, understandings, negotiations, proposals and other representations, verbal or written, in each case relating to such subject matter. Each party acknowledges that in entering into the Agreement it has not relied on any representations made by the other party that are not expressed in the Agreement.

- 23.6 Signature and Amendment. The Agreement is binding when signed by both parties, provided that Customer has not made any changes to the Agreement. The Agreement may be changed only by a written amendment signed by both parties.