

## Elo Elite & Elo Elite AV Partner Program / Terms and Conditions

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The terms and conditions of the Elo Touch Solutions, Inc. (including its subsidiaries, “Elo”) Elite & Elo Elite AV Partner Program Agreement (“**Agreement**”) set forth below apply to the activities of a Participant under the program including, but not limited to, the Resale of Products. This document is presented for reference purposes only. Each Participant will be required to execute an Elo Elite & Elo Elite AV Partner Program Agreement as a condition to acceptance within Elo’s program.

1. **Definitions.** The capitalized terms below shall have the meaning given to them below when used herein :
  - a. “**Added Value**” means the non-Elo component or portion of a Product related offering by Participant to End Users, including any hardware or software offerings by third parties that Participant combines with a Product. Examples of Added Value are pre- and post-sales design, configuration, trouble-shooting, and support and the sale of complementary products and services. Participant acknowledges that telesales, catalog sales, and sales over the Internet do not include Added Value if inbound communications from the prospective End User purchaser were exclusively prompted by something other than interaction between Participant’s sales representative and such prospective End User.
  - b. “**Affiliate**” means any entity that now or hereafter controls, is controlled by or is under common control with a specified entity, where “control” means beneficial ownership, directly or indirectly, of more than 50% of the outstanding shares or other ownership interest (representing the right to elect directors or other managing authority or the right to make the decisions for such entity, as applicable), only for so long as such control exists.
  - c. “**Authorized Source**” means a point-of-sale distributor that is authorized by Elo to redistribute Products within the Territory to Participant.
  - d. “**Confidential Information**” means any information of a confidential or proprietary nature obtained from Elo and any information obtained from or provided by Elo which is not readily available to others in the public domain.
  - e. “**Elo Website**” means Elo’s website located at [www.elotouch.com](http://www.elotouch.com).
  - f. “**End User**” means a final purchaser of a Product who uses the Product solely for Internal Use and not for Resale, remarketing or distribution.
  - g. “**Go to Market Strategy**” means the strategy approved by Elo for Participant’s Resale of Products which includes, but is not limited to, Added Value, integration and onsite service, sales and tech support.
  - h. “**Include**” or “**Including**” means by way of example only and without limitation.
  - i. “**Internal Use**” means any business use of a Product for an End User’s own internal use and not Resale.
  - j. “**Manufacturer’s Suggested Retail Price**” or “**MSRP**” means Elo’s price for a Product that can be obtained on the Elo Website or by any of Elo’s “Value Added Distributors”.
  - k. “**Minimum Advertised Price**” or “**MAP**” means the price Participant may advertise a Product which is to be no lower than 15% below Elo’s MSRP.
  - l. “**Non-Genuine Products**” means any and all products: (i) to which an Elo trademark or service mark has been affixed without Elo’s consent; (ii) that have not been manufactured by Elo; (iii) are produced with the intent to counterfeit or imitate a genuine Product; or (iv) Products where any form of copyright notice, trademark, logo, confidentiality notice, serial number or other product identifier have been removed, altered, or destroyed.
  - m. “**Participant**” means a value-added reseller or independent software vendor that is a registered member of the Elo Elite & Elite AV Program that purchases Products from an Authorized Source and Resells the Product in accordance with the Participant’s Go to Market Strategy.
  - n. “**Partner Registration Application**” means Participant’s registration application approved by Elo.
  - o. “**Products**” means those Elo hardware products (including embedded Software) which Elo makes available to an Authorized Source for Resale and are purchased by Participant from such Authorized Source.
  - p. “**Professional Services**” means any pre or post-sale services performed by Participant for an End User that provide Added Value for Products. Such services include without limitation pre- and post-sales design, configuration, trouble-shooting, and support on Products.
  - q. “**Qualifying Opportunities**” means sales opportunities registered and pre-approved by Elo, subject to Elo’s

sole discretion, and subject to the terms and conditions of the Elo Elite and Elite AV Deal Registration Terms and Conditions found at: [http://media.elotouch.com/pdfs/manuals/Elo\\_Deal\\_Registration\\_Guidelines\\_022016.pdf](http://media.elotouch.com/pdfs/manuals/Elo_Deal_Registration_Guidelines_022016.pdf)

- r. **“Qualifying Products”** means the following Elo Products: select touch monitors, all-in-one touch computers, Interactive Digital Signage (IDS), and tablets which Elo makes available to an Authorized Source for Resale and are purchased by an Elite AV Participant from such Authorized Source.
  - s. **“Resale”** or **“Resell”** means any sales or distributions of a Product to an End User.
  - t. **“Software”** means any applications programming code or executable computer program(s) that is either installed in a Product or otherwise made available to an End User, including any of related documentation.
  - u. **“Term”** means the period of time set forth in Section 6(a) below.
  - v. **“Terms of Sale”** means Elo’s terms of sale posted on the Elo Website as updated by Elo from time to time.
  - w. **“Territory”** means the country(ies) identified by Participant in the Partner Registration Application.
  - x. **“Unauthorized Product”** means any Product that Participant purchases or acquires, either directly or indirectly, from any party other than Elo and/or an Authorized Source, or sells to any party other than an End User. Unauthorized Products do not include Non-Genuine Products.
2. **Participant Benefits.** Subject to Participant’s compliance with its obligations under this Agreement, Participant shall be entitled to the following benefits:
- a. **Elotouch.com Access.** Participant shall have Participant-level access to the information and tools on the Elo Website or similar web-based tools as they are made available by Elo to the Elo Elite & Elite AV program partners.
  - b. **Sales Assistance.** Elo sales representatives will provide sales support to Participant and may make joint visits to End Users, all as deemed reasonably necessary by Elo at its sole discretion.
  - c. **Marketing Support.** Participant may identify itself as an Elo Elite & Elite AV Partner and use Elo’s Elite & Elite AV Partner Program logo (as made available to Participant by Elo and subject to the terms and conditions set forth herein) solely on Participant’s website and in accordance with Elo’s logo usage requirements and guidelines. Participant will receive product and market communications from Elo and may propose joint marketing and communications activities (such activities subject to Elo’s prior written approval at Elo’s sole discretion).
  - d. **Training.** Elo application engineers, marketing and sales representatives may provide product trainings to the Participant, either on-site, at other designated location in Participant’s territory, or through webinars.
  - e. **Demo Opportunities.** Participant may receive loan products for customer demonstrations or trade shows at Elo’s discretion and may be required to execute documentation consistent with Elo’s practice. Participant may purchase a limited number of Products per year at an Elo prescribed discounted price to keep as demo units. Demo units are not intended for resale within the first six months following their purchase and must be clearly labeled “demo units” if sold thereafter, to make it obvious to an End User that they are not being sold as new. Discounted or no-cost demo units are limited to one (1) unit per calendar year per Elo Elite or Elite AV reseller.
  - f. **Roadmaps.** Elo may offer Participant Territory-based roadmaps and other product information selected by Elo to assist Participant in sales in the Territory and Participant will provide Elo with feedback and suggested changes, which Elo may adopt at its discretion.
  - g. **Lead referral.** Elo will make commercially reasonable efforts to pass on End User Territory-based prospects and vertical market focus to the Participant. Participant agrees to report back to Elo on such opportunities and share information reasonably requested by Elo to allow Elo to track the sale and competitive analysis, including project information and progress. Participant understands that nothing herein shall require Elo to refer business to Participant or prefer any Participant over another. To the extent that Elo approves special pricing for a Product for a particular opportunity, Participant must sell such discounted Products to the designated End User unless otherwise reported to Elo and agreed by it in writing.
  - h. **Product Promotions.** Elo may periodically make exclusive Product promotions available to the Elo Elite and Elite AV Participant community that may include additional product discounts on new and existing products.
  - i. **Government and Education discounts (Elo Elite AV only).** For Qualifying Products sold to Qualifying Opportunities, Elo will provide up to a 2% discount to Elite AV members for resale to government entities and educational institutions.

- j. Freight Cost Benefits (Elo Elite AV only). For a limited time, Elo is empowering and incentivizing our Authorized Sources to offer Elite AV members exclusive freight benefits to reduce the cost of freight on certain Qualifying Product orders.

### 3. **Elo Authorization and Resale Rules.**

- a. Elo Authorization and Grant of Rights. During the Term of this Agreement:
  - i. Elo authorizes Participant to purchase Products from Authorized Sources, and to Resell such Products in accordance with Participant's Go to Market Strategy and pursuant to the terms and conditions of this Agreement; and
  - ii. Elo grants Participant a limited, nonexclusive, revocable license to purchase the Products from Authorized Sources, and Resell to End Users located in the Territory consistent with and subject to the Elo Terms of Sale and this Agreement.

Any Resale of Products outside the scope permitted by Section 3 is prohibited.

- b. Online Sales Limitation. In order to maintain Elo Elite and Elite AV eligibility, Participant's online sales may not constitute more than 20% of a Participant's total revenue in any one quarter.
- c. No Resale Outside the Territory. Participant agrees not to solicit Product orders, engage sales persons, Resell, or establish warehouses or other distribution centers outside of the Territory.
- d. Elo Terms of Sale. The Elo Terms of Sale shall apply to the Resale of all Products under this Agreement. In the event of any conflict between this Agreement and the Terms of Sale, the Terms of Sale shall prevail.

### 4. **Participant Obligations and Requirements.**

- a. Added Value Requirement. Each Participant Resale will include Participant's Added Value. Participant may demonstrate Products to prospective End Users at the End User's location and make Professional Services available for each Product.
- b. Non-Genuine or Unauthorized Elo Products. Participant acknowledges that purchases and resales of Non-Genuine Products or Unauthorized Products are not within the scope of this Agreement and agrees not to sale or offer for sale or publicize any Non-Genuine or Unauthorized Products or present them as Elo products. If Elo determines that Participant has resold and/or redistributed Non-Genuine Products or Unauthorized Products, including any purchased from non-authorized sources, then Elo may, at Elo's sole discretion take one or more of the following actions: (i) suspend shipments to Participant; (ii) require Participant, within ten (10) days of Elo's request, to recall and destroy such products that Participant has sold to End Users and replace such products with legitimate, equivalent Products; (iii) require Participant, within five (5) days of receiving Elo's written request, to provide Elo with all details related to Participant's acquisition of all Unauthorized Elo Products and/or Non-Genuine Products, including without limitation, its suppliers, shipping details and all buyers to whom Participant resold such products and cease publicizing them, and/or (iv) immediately terminate this Agreement. Additionally, Participant shall notify Elo promptly of the existence, or suspected existence, of Non-Genuine Products in possession of third parties, and further agrees that it will, at Elo's request, assist Elo to diligently pursue an action against any third party in possession of Non-Genuine Products. Participant agrees not to publish or market Non-Genuine Products or Unauthorized Products as Elo products or use information provided to it by Elo to compare such products to Elo Products in order to induce others to purchase such Non-Genuine Products or Unauthorized Products.
- c. Compliance with Laws. Participant will comply with all laws, licenses, permits and approvals required by any government or authority, including any recycling or take-back programs applicable to packaging, Resale or use of Products, and shall comply with all applicable laws, rules, policies and procedures including without limitation the U.S. Foreign Corrupt Practices Act and any other similar non-U.S. laws (collectively, "**Applicable Laws**").
- d. Proprietary Marking. Participant will not remove, alter, or destroy any form of copyright notice, trademark, logo, use restrictions, Product documentation or confidentiality notice provided with any Product.
- e. Software Restrictions. Participant will not copy or redistribute any item of Software except as specifically permitted in this Agreement as part of a Product. Participant agrees that it will not redistribute Software received from any source other than Elo or an Authorized Source. Participant will not translate, reverse engineer, decompile or disassemble the Software or any Product, and will transfer to each End User to which Participant resells Products all end-user license terms and end-user documentation provided by Elo and accompanying such Products.
- d. Agreements with an Authorized Source. Participant acknowledges that an Authorized Source may require

Participant to enter into other agreements with such Authorized Source. Participant acknowledges and accepts that each Authorized Source is an independent party who is not empowered to act on behalf of Elo or bind or represent Elo in any manner. Therefore, such agreements will be considered executed only between Participant and the applicable Authorized Source. For the avoidance of doubt, this Agreement shall not constitute a sale, purchase or distribution agreement with Elo.

5. **Pricing.**

- a. **Participant Prices.** The prices Participant pays for Products will be set by the Authorized Source from which Participant purchases such Products. Subject to Elo's ability to impose maximum Resale price limitations, Participant is free to determine its Resale prices.
- b. **Minimum Advertised Price (MAP).** Participant agrees not to advertise Products at a price lower than the MAP. The MAP percentage and MSRP are subject to change at Elo's discretion. If Participant advertises Products at prices below the stated MAP, Elo will be entitled to all its rights and remedies available to it, including, without limitation, the right to terminate this Agreement.
- c. **Special Pricing.** Elo may provide special pricing to an Authorized Source which such Authorized Source may in turn provide to Participant. Any agreement between Elo and Participant's Authorized Source must be in writing, including email notification from Elo, and must specify a fixed time period during which such special pricing shall be provided. If no time limit is specified in the written agreement, the time period shall be ninety (90) days from the effective date of the written agreement regarding special pricing. To the extent such special pricing is extended to Participant by the Authorized Source, the special pricing will be limited to Resales of Product solely for the particular opportunity and in accordance with Participant's Go to Market Strategy unless agreed to otherwise in writing by Elo. Participant shall not combine special pricing with any other discount, promotion or negotiated pricing provided by Elo. Nothing herein shall prohibit Participant from combining special pricing with additional discounts not funded by Elo.
- d. **Special Pricing Violations.** If Elo determines that Participant has Resold Products purchased with special pricing provided pursuant to this Section 5 to any person or entity outside the Go to Market Strategy or combined such special pricing provided by Elo with any other discount, promotion or negotiated pricing, then Elo may, at Elo's sole discretion: (i) invoice Participant for the difference between such additional discount and Participant's then current resale discount; and/or (ii) inspect Participant's purchases and relevant records; and/or (iii) suspend Participant's access to price deviations and other Elo sales and marketing programs; and/or (iv) suspend shipments to Participant; and/or (v) terminate this Agreement.

6. **Term and Termination.**

- a. **Term.** This Agreement starts on the Effective Date and continues for a period of one (1) year and shall be automatically extended for additional one year terms thereafter unless terminated earlier as provided for in this Agreement.
- b. **Termination.** This Agreement may be terminated for convenience, for any reason or no reason, by either party upon thirty (30) days prior written notice to the other. This Agreement may be terminated by Elo for cause upon Participant's material breach of the Agreement, on ten (10) days' notice.
- c. **Effect of Termination.** Upon termination of this Agreement, Participant's rights to purchase Products from any Authorized Source shall immediately terminate and all Participant benefits under Section 1 immediately cease.

7. **Publicity.** Except as expressly provided in this Agreement, neither Elo nor Participant will issue press releases or make other public announcements without the express written consent of the other party. In addition, Participant shall at no time (nor cause any third party to) take any action, publish or otherwise communicate anything which is or may be detrimental to the business reputation of Elo.

8. **Confidentiality.** Participant shall not use any Confidential Information other than as permitted by Elo in performing its obligations under this Agreement. Participant shall take all reasonable steps to prevent the disclosure, duplication or reproduction of any Confidential Information. Neither this Agreement nor any purchase of Products shall be construed to confer upon Participant or its End Users any license under any patent or other proprietary rights of Elo, except the right to use such Products for the purposes for which they are sold. Upon termination of this Agreement, Participant will return to Elo or destroy all copies of Confidential Information in its possession and certify in writing that it has done so within thirty (30) days after the termination date. Information made available to Participant through the Elo Partner Program password protected website is deemed Confidential Information hereunder and may be used only in connection with Participant's promotion and Resale of Products.

9. **Elo Proprietary Property.** As between Participant and Elo or any Participant End User, the Products, Software,



Confidential Information and all Elo trademarks, copyrights and other intellectual property rights are and at all times will be the sole property of Elo and/or its suppliers to the full extent provided by law and Elo reserves all right, title and interest in and to each right embedded in or included therein.

10. **Relationship of the Parties: No Partnership.** Each party to this Agreement is an independent contractor. This Agreement does not create any agency, partnership, joint venture, employment or franchise relationship. Furthermore, no labor relationship between Elo and Participant employees is created hereby. Participant shall indemnify and hold Elo harmless of any claim or judicial action whatsoever from any Participant employee, including any and all actions or claims arising in connection with the noncompliance by Participant of any Applicable Laws, including any labor laws and/or social security regulations. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. Notwithstanding the use of the term "Partner" in this Agreement, the parties do not intend to create any legal relationship of partnership between them, and neither will assert to any third party or otherwise claim that such a legal relationship exists between them.
11. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding conflict of law rules and principles. The United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded and shall not apply. This Agreement is prepared, executed and will be interpreted in English only. Any dispute arising out of or connected with this Agreement, including a dispute as to the validity or existence of this Agreement, shall be subject to the sole and exclusive jurisdiction of the California courts, or if Participant is headquartered outside the U.S. resolved by (a) arbitration in Hong Kong pursuant to the Hong Kong International Arbitration Centre ("**HKIAC**") Administered Arbitration Rules ("**Rules**") in force when the Notice of Arbitration is received by the HKIAC, if Participant is headquartered in Asia; or (b) administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules in New York, New York if Participant is headquartered elsewhere, and in any event conducted in the English language by three arbitrators, save that the parties agree to waive any right of appeal against the arbitration award. Nothing contained in this Section shall preclude either party from seeking or obtaining preliminary injunctive relief pending resolution of the dispute in issue. Each party acknowledges that any actual or threatened breach of this Agreement may constitute immediate, irreparable harm to the other party for which monetary damages would be an inadequate remedy, and that injunctive relief may be an appropriate remedy for such breach. Accordingly, in the event of any breach of this Agreement, the non-breaching party may seek immediate injunctive relief without the necessity of posting bonds. This Agreement does not create any agency or partnership relationship. Any failure to enforce any provision of this Agreement shall not constitute a waiver of any other provision. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Participant will not assign or transfer any rights or obligations under this Agreement without the prior written consent of Elo. If any provision is held to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be amended, nor any obligation waived, except by a writing signed by the parties hereto. All notices under this Agreement shall be in writing and delivered to the respective addresses set forth herein. The parties hereto accept and agree to the execution of the Agreement electronically and in counterparts, each of which shall be deemed an original. All terms of this Agreement, which by their nature extend beyond the date the Agreement ends, remain in effect until fulfilled. All notices and demands (collectively, a "**Notice**") between the parties shall be in writing and shall be provided: (W) in person; (X) by registered or certified mail, return receipt requested; (Y) by recognized international courier service; or (Z) by email confirmed by regular mail, to the address set forth in the opening paragraph of this Agreement (notices to Elo should be addressed to General Counsel). Notice is effective upon receipt.