

**CONTRACT FOR  
ELATION COMPLIANCE MANAGEMENT SYSTEMS SUBSCRIPTION  
BETWEEN  
FLORIDA HOUSING FINANCE CORPORATION  
AND  
ELATION SYSTEMS, LLC**

This Contract for an Elation Compliance Management Systems Subscription, 006-2025 (Contract) is entered into by and between the FLORIDA HOUSING FINANCE CORPORATION (Florida Housing), a public corporation and a public body corporate and politic, with headquarters located at 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301, and ELATION SYSTEMS, INC (Contractor), located at 5000 Hopyard Road, Suite 405, Pleasanton, CA 94588. Upon execution by both parties, this Contract shall become effective as of the date the last party signs (Effective Date).

**RECITALS**

- A. The Contractor represents that it is fully qualified and possesses the requisite skills, knowledge, qualifications and experience to provide the software solution identified herein.
- B. Florida Housing has a need for such services and does hereby accept the offer of the Contractor upon the terms and conditions outlined in this Contract.
- C. Florida Housing has the authority pursuant to Florida law to direct disbursement of funds for compensation to the Contractor under the terms and provisions of this Contract.

**AGREEMENT**

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

A. **RECITALS**

The Recitals set out above are true and correct and are incorporated into and made a part of this Agreement.

B. **ATTACHMENTS**

This Contract has the following attachments, which are incorporated herein:

Exhibit A, Master Application Service Agreement

### C. ENGAGEMENT OF THE CONTRACTOR

The Contractor agrees to provide the Elation Compliance Management Systems Subscription in accordance with the terms and conditions hereinafter set forth. The Contractor agrees to perform the services set forth in Exhibit A, and as otherwise stated in this Contract. The Contractor understands and agrees that all services under this Contract are to be performed solely by the Contractor and may not be subcontracted or assigned without the prior written approval and consent of Florida Housing.

### D. TERM OF CONTRACT

The term of this Contract shall be for one year from the Effective Date.

### E. MODIFICATION OF CONTRACT

Either party may request a modification of the provisions of this Contract. Modifications that are mutually agreed upon shall be valid only when reduced to writing and signed by the parties.

### F. INVOICES

The Contractor shall submit invoices to the program contact person in Section K, Administration of Contract. Each invoice for fees shall be in a format that is clearly itemized so that the invoice states the specific services performed and when and where the services were performed. Payment of an undisputed invoice shall be made within a reasonable period of time not to exceed 30 days after receipt of the invoice. If an invoice is disputed, Florida Housing shall notify the Contractor in writing within 10 business days of receipt, specifying the basis for the dispute. Both parties shall work in good faith to resolve the dispute within 30 days. The Contractor shall not be reimbursed for any expenses unless expressly authorized in this Contract or pre-approved in writing by Florida Housing. Any pre-approved reimbursable expenses must be reasonable, necessary, and supported by appropriate documentation. If the Contractor is found to be in non-compliance with applicable Florida laws, federal laws, Florida Housing rules or Florida Housing policies governing its duties hereunder, or fails to perform its duties hereunder, any compensation received in connection with this Contract shall be subject to forfeiture to Florida Housing.

### G. FEES/COSTS

All compensation shall be in accordance with the terms of this Contract and shall constitute full payment for services rendered. Contractor acknowledges and agrees that all compensation paid under this Contract constitutes taxable income, and the Contractor shall be solely responsible for all applicable federal, state, and local taxes.

Contractor shall be provided an annual subscription fee at the beginning of the service term as follows:

1. Annual flat fee subscription for **Section 3** for up to 30 projects at \$18,500. If the number of projects exceeds 30, the Contractor will bill at \$100/project/month for each of the additional projects

2. Annual flat fee subscription for **Davis-Bacon** for up to 10 projects at \$37,000. If the number of projects exceeds 10, the Contractor will bill at \$350/project/month for each of the additional projects.

#### H. LIABILITY: INDEPENDENT CONTRACTOR; COMPLIANCE WITH LAWS

1. Florida Housing shall not be deemed to have assumed any liability for the acts, omissions, or negligence of the Contractor, its agents, its servants, or employees, and the Contractor specifically accepts responsibility for its acts, omissions or negligence and for the acts, omissions or negligence of its agents, servants or employees, and shall defend and hold Florida Housing harmless from and against the claims of any party arising out of or claimed to arise out of any such acts, omissions, or negligence.

2. This Contract is executed on behalf of Florida Housing by the signatory only in his or her designated capacity as representative and on behalf of Florida Housing. Such individual shall neither have nor incur any individual or personal responsibility or liability under this Contract as a result of such execution.

3. Nothing herein shall be construed as a waiver of sovereign immunity by Florida Housing; it being the intent to reserve all such rights and immunities to the fullest extent of the law.

4. The Contractor, together with its agents, suppliers, subcontractors, officers, and employees, shall have and always retain under this Contract the legal status of an independent contractor, and in no manner shall they be deemed employees of Florida Housing or deemed to be entitled to any benefits associated with such employment. During the term of this Contract, the Contractor shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law. The Contractor remains responsible for all applicable federal, state, and local taxes, and all FICA and Medicare contributions.

5. The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state and local agencies having jurisdiction and authority. In addition, and by way of non-exhaustive example, the Contractor shall comply with Florida Housing policies while on Florida Housing premises and in the conduct of its business with Florida Housing personnel.

6. The Contractor specifically accepts responsibility for payment of all taxes, assessments, or contributions that may be required to be paid to any unit of government as a result of the payments being paid to or by the Contractor, if any, in conjunction

with the services rendered pursuant to this Contract. At no time shall the Contractor make any commitments for or incur any charges or expenses for, or in the name of, Florida Housing.

7. The Contractor shall not be relieved of liability to Florida Housing for damages sustained by Florida Housing by virtue of any termination or breach of this Contract by the Contractor.

#### I. DEFAULT AND REMEDIES

1. If any of the events listed in subparagraph 2. of this section occur, all obligations on the part of Florida Housing to continue doing business with the Contractor or assign any future transaction to the Contractor shall, if Florida Housing so elects, terminate and Florida Housing may, at its option, exercise any of its remedies set forth herein, or as otherwise provided by law. However, Florida Housing may continue doing business with the Contractor as a participant after the happening of any event listed in subparagraph 2. of this section without waiving the right to exercise such remedies, without constituting a course of dealing, and without becoming liable to include the Contractor in the transaction or any future transaction.

2. The Events of Default shall include, but not be limited to, the following:

a. If any report, information or representation provided by the Contractor in this Contract is inaccurate, false or misleading in any respect;

b. If any warranty or representation made by the Contractor in this Contract or any other outstanding agreement with Florida Housing is deemed by Florida Housing to be inaccurate, false or misleading in any respect;

c. If the Contractor fails to keep, observe, or perform any of the terms or covenants contained in this Contract, or is unable or unwilling to meet its obligations as defined in this Contract;

d. If, in the sole discretion of Florida Housing, the Contractor has failed to perform or complete any of the services identified in the attachments;

e. If the Contractor has not complied with all Florida laws, federal laws, Florida Housing rules or Florida Housing policies applicable to the work;

f. If the Contractor has discriminated on the grounds of race, color, religion, sex, national origin, disability, or any other legally protected status in performing any service identified in the attachments;

g. If the Contractor does not comply with the terms and conditions set forth in Section 420.512(5), Fla. Stat.;

h. If the Contractor commits fraud in the performance of its obligations under this Contract; or

i. If the Contractor refuses to permit public access to any document, paper, letter, computer files, or other material subject to disclosure under Florida's Public Records Law.

Upon the occurrence of any Event of Default listed in subparagraph 2. above, Florida Housing will provide written notice of the Default detailing the grounds that constitute the Event of Default (Notice of Default), delivered by courier service or electronic mail to the address set forth in Section K, Administration of Contract, herein.

3. Upon the occurrence of any Event of Default listed in subparagraph 2. above, Florida Housing may provide the Contractor a reasonable period of time to cure the Event of Default (Cure Period). If Florida Housing provides a Cure Period, Florida Housing will notify the Contractor of the length of the Cure Period in the Notice of Default.

4. If Florida Housing provides a Cure Period and if the Contractor is unable or unwilling to cure the Event of Default within the Cure Period, Florida Housing may exercise any remedy permitted by law. The pursuit of any one of the following remedies shall not preclude Florida Housing from pursuing any other remedies contained herein or otherwise provided at law or in equity. The remedies include, but are not limited to the following:

a. Florida Housing may terminate the Contract on the tenth (10<sup>th</sup>) day after the Contractor receives the Notice of Default or upon the conclusion of any applicable Cure Period, whichever is later;

b. Florida Housing may commence an appropriate legal or equitable action to enforce performance of the terms and conditions of this Contract;

c. Florida Housing may exercise any corrective or remedial actions including, but not limited to, requesting additional information from the Contractor to determine the reasons for or the extent of non-compliance or lack of performance, issuing a written warning to advise that more serious measures may be taken if the situation is not corrected, advising the Contractor to suspend, discontinue or refrain from incurring fees or costs for any activities in question or requiring the Contractor to reimburse Florida Housing for the amount of costs incurred; or

d. Florida Housing may exercise any other rights or remedies that may be otherwise available under law.

J. TERMINATION

1. Florida Housing may terminate the Contract, without cause, at any time upon 10 days' written notice delivered by courier service or electronic mail to the Contractor at the address set forth in Section K, Administration of Contract, herein.

2. The Contractor may terminate this Contract, without cause, at any time upon 90 days' written notice delivered by courier service or electronic mail to Florida Housing at the physical or electronic address, as applicable, set forth in Section K, Administration of Contract, herein. The Contractor shall be responsible for all costs arising from the resignation of the Contractor and the costs associated with the appointment of and transition to a successor Contractor.

K. ADMINISTRATION OF CONTRACT

1. Florida Housing's contract administrator for this Contract is:

Contract Administrator  
Florida Housing Finance Corporation  
227 North Bronough St., Suite 5000  
Tallahassee, Florida 32301-1329  
Phone: 850.488.4197  
E-mail: Contract.Admin@floridahousing.org

2. The Florida Housing program contact for this Contract is:

Nicole Gibson  
Federal Loan Programs Director  
Florida Housing Finance Corporation  
227 North Bronough St., Suite 5000  
Tallahassee, Florida 32301-1329  
Phone: 850.488.4197  
E-mail: Nicole.Gibson@floridahousing.org  
**or the designated successor.**

3. The Contractor's contract administrator for this Contract is:

Rick Hajjar  
General Manager  
Elation Systems, Inc.  
5000 Hopyard Road, Suite 405  
Pleasanton, CA 94588  
Phone: 925.924.0340 x.505  
E-mail: Rick.Hajjar@elationsystems.com  
**or the designated successor.**

4. All written approvals referenced in this Contract shall be obtained from the parties' contract administrator or their respective designees.

5. All notices shall be given to the parties' contract administrator.

**L. PUBLIC RECORDS; CONFIDENTIALITY; COPYRIGHT, PATENT, TRADEMARK; FILES**

**1. Public Records**

Files Subject to Florida's Public Records Law: Any file, report, record, document, paper, letter, or other material received, generated, maintained or sent by the Contractor in connection with this Contract is subject to the provisions of Section 119.01-15, Fla. Stat., as may be amended from time to time (Florida's Public Records Law). The Contractor represents and acknowledges that it has read and understands Florida's Public Records Law and agrees to comply with Florida's Public Records Law.

Pursuant to Section 119.0701(2)(b), Fla. Stat., the Contractor will be required to comply with public records laws, specifically to:

a. Keep and maintain public records required by the public agency to perform the service.

b. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.

d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

Notwithstanding anything contained herein to the contrary, the provisions and requirements of this paragraph shall only apply if and when the Contractor is acting on behalf of Florida Housing.

**If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Corporation Clerk at:**

**Corporation Clerk  
227 N. Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329  
Phone: 850.488.4197  
E-mail: [Corporation.Clerk@floridahousing.org](mailto:Corporation.Clerk@floridahousing.org)**

2. Confidentiality

a. If the Contractor asserts that any information or materials intended to be delivered or provided under this Contract constitute a trade secret, or are otherwise confidential or exempt from the public records disclosure requirements of Florida's Public Records Law, such assertion must be made in writing to Florida Housing's Contracts Administrator upon submitting them to Florida Housing.

b. It is the Contractor's obligation and responsibility to maintain the secrecy of trade secrets and the confidentiality of other confidential information by adequately marking such materials as confidential or exempt before forwarding such information or materials to Florida Housing. It shall be the responsibility of the Contractor to defend the confidentiality of such materials, if necessary.

c. In the case of work product furnished to Florida Housing pursuant to this Contract that is confidential, the Contractor will treat such materials as confidential and will not reveal or discuss such materials or any other information learned as a result of this Contract with any other person or entity, except as authorized or directed by Florida Housing.

d. Working papers, copies, internal documents, procedures, methods and related materials considered confidential and/or proprietary shall be treated as confidential and/or proprietary and shall not be revealed or discussed with any other person or entity, except as authorized or directed by Florida Housing. All such records and materials will remain the property of Florida Housing.

e. If the Contractor is required to disclose or publish the existence or terms of transactions under this Contract pursuant to Florida's Public Records Law, then the



Contractor shall notify Florida Housing in writing of such disclosure within two (2) days after receipt of the Public Records request.

3. Copyright, Patent and Trademark

a. If the Contractor brings to the performance of this Contract a pre-existing copyright, patent or trademark, the Contractor shall retain all rights and entitlements to that pre-existing copyright, patent or trademark unless the Contract provides otherwise.

b. If any discovery or invention arises or is developed in the course of or as a direct result of work or services performed under this Contract, the Contractor shall refer the discovery or invention to Florida Housing for a determination whether patent protection will be sought in the name of Florida Housing. Any and all patent rights accruing under or in connection with the performance of this Contract are hereby reserved to Florida Housing. In the event that any books, manuals, films, or other copyrightable material are produced, the Contractor shall notify Florida Housing in writing. Any and all copyrights or trademarks created by or in direct connection with the performance under this Contract are hereby reserved to Florida Housing.

c. All subcontracts or other arrangements entered into by the Contractor, with prior written approval and consent of Florida Housing, for the purpose of developing or procuring copyrightable materials (e.g. audiovisuals, computer programs, software, publications, curricula, research materials or training materials, etc.) shall specifically reference and reserve Florida Housing's exclusive rights to use and exploit copyrights and licenses to the extent permitted by copyright law and Florida Statutes.

4. Files

a. Contents of the Files: The Contractor shall maintain files containing documentation to verify all compensation to the Contractor in connection with this Contract, as well as reports, records, documents, papers, letters, computer files, or other material received, generated, maintained or filed by the Contractor in connection with this Contract. The Contractor shall also keep files, records, computer files, and reports that reflect any compensation it receives or will receive in connection with this Contract.

b. Retaining the Files: The Contractor shall maintain these files for five years after the fiscal year in which the files become inactive, except that, if any litigation, claim or audit is commenced with respect to the transactions documented by such files before the end of the aforementioned five-year period and extends beyond the expiration of the five-year period, these files will be retained until all litigation, claims, or audit findings involving the files have been resolved.

c. Access to the Files: Upon reasonable notice, the Contractor and its employees shall allow Florida Housing or its agent(s) access to its files during normal business hours, 9:00 a.m. to 5:00 p.m., Monday through Friday, provided such day is not a holiday.

d. Return of the Files: In the event this Contract is terminated, all finished or unfinished documents, data, studies, computer files, correspondence, and other products prepared by or for the Contractor under this Contract shall be submitted to Florida Housing within 15 days of such termination at the expense of the Contractor.

#### **M. PERSONALLY IDENTIFIABLE INFORMATION (PII); SECURITY**

The laws of the State of Florida, including the State Cybersecurity Act, Section 282.318, Fla. Stat. (2021) and Florida Cybersecurity Standards, Fla. Admin. Code Ann. ch. 60GG-2, (collectively, “Florida Law”) and the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. § 6801 et seq.) and the regulations promulgated thereunder, including, without limitation, the Interagency Guidelines Establishing Standards for Safeguarding Customer Information (collectively, the “Act”), impose various requirements regarding consumer privacy as well as the confidentiality, integrity, and accuracy of consumer information. Notwithstanding anything contained herein to the contrary, the provisions and requirements of this section shall only apply if and when the Contractor and its employees and/or agents may have access to certain confidential information of Florida Housing and nonpublic personal information pertaining to the customers of Florida Housing.

##### **1. Definitions.**

For the purposes of this section:

a. “Customer Data” means any and all data and information of any kind or nature submitted to Contractor by Florida Housing, or received by Contractor on behalf of Florida Housing, related to a natural person. Customer Data includes but is not limited to “nonpublic personal information” (as defined in the Act) necessary for Contractor to provide the Services, as well as “personal information” or “nonpublic information” as defined under Florida Law. Florida Housing shall remain the sole and exclusive owner of all Customer Data, regardless of whether such data is maintained on paper, magnetic tape, magnetic disk, personal computing devices (including but not limited to computers, tablets, smartphones, etc.), cloud computing systems maintained by Contractor or others on service provider’s behalf, or any other storage or processing device.

b. “Confidential Information” shall mean all information designated by Florida Housing as confidential, including all Customer Data, and all information or data, whether marked or designated as confidential, concerning or related to Florida Housing’s products, (including the discovery, invention, research, improvement, development, manufacture, or sale thereof), processes, or general

business operations (including sales costs, profits, pricing methods, organization, and employee lists), and any information obtained through access to any of Florida Housing's information systems, including, without limitation, networks, network services, computers, computer systems and communications systems (collectively, the "Information Systems"), which, if not otherwise described above, is of such a nature that a reasonable person would believe it to be confidential or proprietary. Confidential Information, other than Customer Data (which shall always remain confidential), shall not include: (a) information which is or becomes publicly available (other than by Contractor or such other party having the obligation of confidentiality) without breach of this Contract; (b) information independently developed by Contractor; or (c) information received from a third party not under a confidentiality obligation to Florida Housing.

2. Use of Confidential Information. Contractor shall not use, retain, copy, sell, transfer, publish, disclose, display, or otherwise make any of Florida Housing's Confidential Information available to any third party without the prior written consent of Florida Housing. Contractor shall hold the Confidential Information in confidence and shall not disclose or use such Confidential Information other than for the purposes contemplated by the Contract or in compliance with the requirements set forth in the Act, and/or Florida Law, and Contractor shall instruct all of its directors, officers, employees, agents, contractors and financial, legal and other advisors to whom it provides the Confidential Information (the "Representatives") to use the same care and discretion with respect to the Confidential Information that Contractor requires with respect to its own most confidential information, but in no event less than a reasonable standard of care, including the utilization of security devices or procedures designed to prevent unauthorized access to and processing of the Confidential Information. Contractor shall instruct its Representatives of its confidentiality obligations hereunder and not to attempt to circumvent any such security procedures and devices. Additionally, Contractor shall require that each of its Representatives agree to all of the same restrictions and conditions concerning Confidential Information to which Contractor is bound in this Contract. All Confidential Information shall be distributed only to persons having a need to know such information to perform their duties in conjunction with the Contract. Unless otherwise agreed in writing, the obligations set forth in this Section shall continue perpetually and survive the termination or expiration of the Contract for any reason. Further, upon request by Florida Housing or upon termination of the Contract, Contractor shall deliver to Florida Housing any Confidential Information in its possession and destroy any copies of Confidential Information in Contractor's files, unless otherwise required under operation of law.

3. Access to Information Systems. Access, if any, to Florida Housing's Information Systems is granted solely to perform the Services under the Contract and is limited to those specific Information Systems, time periods and personnel as are separately agreed to by Florida Housing and Contractor from time to time. Florida Housing may require the Representatives to sign individual agreements prior to accessing Florida Housing's Information Systems. Use of Florida Housing's Information Systems during other time periods or by individuals not authorized by

Florida Housing is expressly prohibited. Access is subject to Florida Housing business control and information protection policies, standards and guidelines as may be modified from time to time. Use of any other of Florida Housing's Information Systems is expressly prohibited. This prohibition applies even when an Information System that Contractor is authorized to access serves as a gateway to other Information Systems outside Contractor's scope of authorization. Contractor agrees to access Information Systems only from specific locations approved for access by Florida Housing. For access outside of Florida Housing's premises, Florida Housing may designate the specific network connections to be used to access Information Systems.

4. **Information Security.** Contractor shall be responsible for establishing and maintaining an information security program (the "Information Security Program") designed to satisfy all objectives set forth in the Act and Florida Law. The Contractor shall take full responsibility for the security of all Confidential Information in its possession or in the possession of its approved subcontractors and shall hold Florida Housing harmless for any damages or liabilities resulting from the unauthorized disclosure, processing, or loss thereof. At a minimum, Contractor agrees:

a. To implement appropriate technical and organizational measures, including a network firewall and maintaining secure environments that are patched and up-to-date with all appropriate security updates as designated by a relevant authority, to protect Confidential Information against (i) accidental or unlawful destruction or loss, (ii) unauthorized disclosure, access, processing and exfiltration, or theft, in particular where processing involves the transmission of Confidential Information over a network, (iii) alteration, and (iv) all misuse;

b. To implement appropriate procedures to ensure that (i) unauthorized persons will not have access to the data processing equipment used to process the Confidential Information, (ii) any persons it authorizes to have access to the Confidential Information will respect and maintain the confidentiality and security of the Confidential Information, and (iii) the measures and procedures that it uses will be sufficient to comply with all legal requirements applicable to both Florida Housing and Contractor;

c. To provide for the security of such PII, in a form acceptable to Florida Housing, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits;

d. To ensure the transmission or exchange of Confidential Information with Florida Housing and/or any other parties shall take place via secure Advanced Encryption Standards (AES), e.g., HTTPS, FTPS, SFTP or equivalent means. All data stored as a part of backup and recovery processes shall be encrypted, using AES;

e. To appropriately destroy Confidential Information based on the format stored upon the expiration of any applicable retention schedules; and

- f. To discipline employees that violate the Information Security Program.

5. Information Security Program Monitoring. Upon written request of Florida Housing, Contractor shall provide Florida Housing with viewing access of summaries of all internal and third-party security audits and security test results from the past three years to confirm that Contractor is satisfying its obligations under this Contract, the Act, and Florida Law. Further, during the term of this Contract, the following monitoring is required at Contractor's expense:

- a. Contractor will provide Florida Housing annual written assurances that Contractor's Information Security Program continues to meet the requirements of this Contract.

- b. Contractor will provide Florida Housing, on an annual basis, viewing access to copies of all audits of Contractor's internal controls to protect Confidential Information, Contractor's security program, Contractor's reviews to protect Confidential Information, and Contractor's business continuity program. Such audits may be performed by Contractor or Contractor's independent external auditors.

- c. Each report prepared in connection with the audits required in this Section shall contain Contractor's management response to any noted exceptions, together with appropriate target dates for completion of required or planned changes. In the event Florida Housing's review of any of the above audits raises issues concerning Contractor's continued compliance with this Contract or the requirements set forth in the Act and/or Florida Law, Florida Housing shall give written notice to Contractor of such issues. Within 30 days from the date of Florida Housing's initial written notification to Contractor, the parties shall agree upon a date by which the issues will be resolved. The parties will use their best efforts to resolve the issues, correct any problem, or make appropriate changes to the Contract that do not materially alter the original obligations of the parties. In the event such issues are not resolved before the agreed upon date, the Contract, at Florida Housing's sole option, may be terminated, and any advance payments of fees under the Contract will be prorated as of the termination date and promptly returned by Contractor to Florida Housing. No termination penalty shall be paid by either party.

6. Unauthorized Disclosure. Contractor shall (a) immediately notify Florida Housing of any actual or suspected unauthorized access to, processing, use, or disclosure of the Confidential Information not authorized by the terms of this Contract, (b) estimate the disclosure's effect on consumers, Florida Housing, and the confidentiality, integrity, and availability of the Confidential Information, including the date(s) and number of records affected by unauthorized access or processing of Confidential Information, (c) comply with Florida Housing's requests for assistance in responding to such incident, (d) specify all timelined and corrective actions taken or planned to be taken by Contractor to address this incident and prevent future similar incidents, and (e) otherwise abide by provisions set forth in section 501.171, Fla. Stat.. The parties mutually agree to initiate immediate changes in security procedures and

requirements in the event of such unauthorized access. Upon the occurrence of any actual or suspected unauthorized access to or use or disclosure of the Confidential Information described in clause (a) above which reasonably may be anticipated to have a material adverse effect on Florida Housing's reputation or business, Florida Housing, at its sole option, may immediately terminate the Contract upon notice to Contractor, and any advance payment of fees under the Contract will be prorated as of the termination date and promptly returned by Contractor to Florida Housing. No termination penalty shall be paid by either party.

7. Access to Premises. For the sole purpose of reviewing Contractor's security policies and procedures, Contractor shall grant Florida Housing access to Contractor's premises from time to time during regular business hours upon reasonable notice to Contractor from Florida Housing. Florida Housing shall hold in confidence and shall promptly return or destroy all information contained in or derived from Contractor's policies and procedures and shall not use any such information except for the sole purpose of ensuring Contractor's compliance with the terms of this Contract.

8. Regulatory Oversight. Contractor acknowledges that Florida Housing is regulated by certain regulatory authorities (the "Regulators"), that the Regulators have examination oversight over Florida Housing, and that the Regulators have authority to examine the operations performed by Contractor on behalf of Florida Housing. Contractor will cooperate fully with Florida Housing in responding to inquiries made to Florida Housing by Regulators. In the event a Regulator determines corrective measures are required to meet the requirements of the Act and/or Florida Law, Contractor and Florida Housing will use their best efforts to modify the Contract to comply with such Regulator's requirements. In the event a Regulator formally objects to the relationship between Contractor and Florida Housing and such objection cannot be remedied, the Contract shall be deemed terminated and (i) the parties will mutually agree to an orderly conversion of the Services to another provider of similar services; (ii) all payments made in advance under the Contract shall be prorated as of the termination date and promptly returned by Contractor to Florida Housing; and (iii) no termination penalty shall be paid by either party.

9. Business Resumption and Contingency Plans. Contractor shall maintain in place a complete disaster recovery and business resumption plan sufficient to satisfy all standards and requirements set forth in the Act and Florida Law. Throughout the term of the Contract, Contractor will maintain recovery services that are substantially equivalent to or better than those that are in effect as of the Effective Date of this Contract. Contractor will provide to Florida Housing copies of its disaster recovery and business resumption plan and any test results pertaining thereto upon request by Florida Housing.

10. Insurance. Contractor shall provide Florida Housing with insurance information for stand-alone cyber liability coverage, including the limits available and retention levels. If Contractor does not carry stand-alone cyber liability coverage, Contractor agrees to indemnify costs related to notification, legal fees, judgments,

settlements, forensic experts, public relations efforts, and loss of any business income related to this Commitment.

#### **N. OTHER PROVISIONS**

1. This Contract shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Contract shall lie in Leon County.

2. No waiver by Florida Housing of any right or remedy granted hereunder or failure to insist on strict performance by the Contractor shall affect or extend or act as a waiver of any other right or remedy of Florida Housing hereunder, or affect the subsequent exercise of the same right or remedy by Florida Housing for any further or subsequent default by the Contractor. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a course of dealing.

3. Any power of approval or disapproval granted to Florida Housing under the terms of this Contract shall survive the terms and life of this Contract as a whole.

4. The Contract may be executed in any number of counterparts, any one of which may be taken as an original.

5. The Contractor understands and agrees to provide Florida Housing with an IRS Form W-9 upon request.

6. The Contractor understands and agrees to cooperate with any audits conducted in accordance with the provisions set forth in Section 20.055(5), Fla. Stat.

7. The Contractor understands and agrees to comply with the provisions of Section 448.095, Fla. Stat.

8. The Contractor attests, under penalty of perjury, that it does not meet any of the criteria in Section 287.138(2)(a) – (c), Fla. Stat.

9. The Contractor attests, under penalty of perjury, that it does not use coercion for labor or services as defined in Section 787.06, Fla. Stat.

10. The Contractor shall comply with the requirements of 2 CFR Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, as applicable.

#### **O. LOBBYING PROHIBITION**

No funds, compensation or other resources received in connection with this Contract may be used directly or indirectly to influence legislation or any other official action by the Florida or Federal Legislature or any state or Federal agency. The Contractor further

acknowledges that it has not retained the services of any lobbyist or consultant to assist in the procurement and negotiation of this Contract.

**P. LEGAL AUTHORIZATION**

The Contractor certifies with respect to this Contract that it possesses the legal authority to enter into this Contract and that, if applicable, its governing body has authorized, by resolution or otherwise, the execution and acceptance of this Contract with all covenants and assurances contained herein. The Contractor also certifies that the undersigned possesses the authority to legally execute and bind the Contractor to the terms of this Contract.

**Q. PUBLIC ENTITY CRIME**

Pursuant to Section 287.133(2)(a), Fla. Stat.: “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.”

Any contract in violation of this provision shall be null and void.

**R. CONFLICTS OF INTEREST**

1. Section 420.503(34), Fla. Stat., states:

“Prohibited business solicitation communication” means a private written or verbal communication between a member, officer, or covered employee of the corporation and a service provider regarding the merits of the service provider and whether the corporation should retain the services of the service provider. The term does not include:

- (a) A verbal communication made on the record during a public meeting;
- (b) A written communication provided to each member and officer of the corporation and made part of the record at a public meeting;
- (c) A written proposal or statement of qualifications submitted to the corporation in response to a corporation advertisement seeking proposals or statements of qualifications as part of a competitive selection process.



(d) A verbal or written communication related to the contractual responsibilities of a service provider who was selected to provide services or who was included in a pool of service providers eligible to provide services as a result of a competitive selection process, so long as the communication does not relate to solicitation of business.

(e) A verbal or written communication related to a proposed method of financing or proposed projects, so long as the communication does not relate to solicitation of business.

2. By executing this contract, the Contractor certifies that it shall comply with, and is currently in compliance with, Section 420.512(5), Fla. Stat., as amended.

3. In addition to the conflict of interest rules imposed by the Florida Statutes, should the Contractor become aware of any actual, apparent, or potential conflict of interest or should any such actual, apparent, or potential conflict of interest come into being subsequent to the effective date of this Contract and prior to the conclusion of the Contract, the Contractor will provide an e-mail notification to Florida Housing's Contract Administrator within 10 working days. If Florida Housing, in its sole discretion, finds the Contractor to be in non-compliance with this provision, without prior written consent from Florida Housing's Executive Director, any compensation received in connection with this Contract shall be subject to forfeiture to Florida Housing and all obligations on the part of Florida Housing to continue doing business with the Contractor or assign any future transaction to the Contractor shall, if Florida Housing so elects, terminate.

#### S. ELECTRONIC SIGNATURES

The parties agree that this Contract (and any attachments, exhibits, and amendments) may be executed and delivered by electronic signatures and that the signatures appearing on this Contract are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Each executed counterpart shall be deemed an original, and all such counterparts shall constitute one and the same document. As used herein, the term "electronic signatures" shall have the meaning in Section 668.50, Fla. Stat.

#### T. ENTIRE AGREEMENT

This Contract, including any and all attachments, embodies the entire agreement of the parties. There are no other provisions, terms, conditions, or obligations between the parties. This Contract supersedes all previous oral or written communications, representations, or agreements on this subject not incorporated herein.


U. SEVERABILITY

If any provision of this Contract is in conflict with any applicable statute or rule, or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict or unenforceability, and shall be deemed severable, but shall not invalidate any other provision of this Contract.

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IN WITNESS WHEREOF, the parties have executed this Contract Number 006-2025, each through a duly authorized representative, effective on the Effective Date.

ELATION SYSTEMS, LLC

By: 

Name: Rick Hajjar

Title: General Manager

Date: 3/4/2025

FLORIDA HOUSING FINANCE CORPORATION

By: 

Name: Angeliki G. Sures

Title: CFO

Date: 3/4/2025

**EXHIBIT A**  
**Elation Systems Master Application Service Agreement**

**To the extent that any of the terms within this Exhibit conflict with the Contract above, the terms of the Contract shall prevail.**

AS PART OF THE ORDERING PROCESS, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF ELATION SYSTEMS (THE ELATIONSYS) ONLINE SERVICE (THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST SELECT THE "I DECLINE" BUTTON AND MAY NOT USE THE SERVICE.

**Welcome**

As part of the Service, Elation Systems, LLC will provide you with use of the Software Service, including a browser interface and data encryption, transmission, access and storage. Your registration for or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the Elation Systems website incorporated by reference herein, including but not limited to Elation Systems' privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

**1. Privacy & Security**

Elation Systems reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Individual users, when they initially log in, will be asked whether or not they wish to receive marketing and other non-critical Service-related communications from Elation Systems from time to time. They may opt out of receiving such communications at that time or at any subsequent time by changing their preference under Personal Setup. Note that because the Service is a hosted online application Elation Systems occasionally may need to notify all users of the Service whether or not they have opted out as described above) of important announcements regarding the operation of the Service.

**2. License Grant & Restrictions**

Elation Systems hereby grants you a non-exclusive, non-transferable, nationwide right to use the Service solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Elation Systems and its licensors.

You shall not (i) license, sublicense, sell, resell transfer, assign distribute or otherwise commercially exploit or make available to any unauthorized third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the

Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual. User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

### 3. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national laws, treaties and regulations in connection with your use of the Service, including those related to data privacy international communications and the transmission of technical or personal data. You shall: (i) notify Elation Systems immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Elation Systems immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Elation Systems user or provide false identity information to gain access to or use the Service.

### 4. Account Information and Data

Elation Systems does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). You, not Elation Systems, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all reported Data, and Elation Systems shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any reported Data except as detailed within this Agreement. In the event this Agreement is terminated, Elation Systems will make available to you a file of the Customer Data within 60 days of termination if you so request at the time of termination. Elation Systems reserves the right to withhold remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use the reported Data immediately ceases.

Elation agrees to notify you in writing within five (5) business days of any discovery by Elation of any breach or suspected breach of the provisions of this Agreement or any loss or unauthorized use, disclosure, acquisition of or access to any of your confidential information and/or your business systems of which Elation becomes aware (any such breach or suspected breach being referred to herein as a "Data Breach"). Such notice shall summarize in reasonable detail the effect on you, if known, of the Data Breach and the corrective action taken or to be taken by Elation. Elation shall promptly take all appropriate or legally required corrective actions and shall cooperate fully with you in all reasonable and lawful efforts to prevent, mitigate or rectify such Data Breach.

In the event of any actual or apparent theft, unauthorized use or disclosure of any of your data, Elation will immediately commence all reasonable efforts to investigate and correct

the causes and remediate the results thereof, and within two (2) business days following discovery of any such event, provide you notice thereof, and such further information and assistance as may be reasonably requested.

#### 5. Intellectual Property Ownership

Elation Systems alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Elation Systems Technology the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Elation Systems Technology or the Intellectual Property Rights owned by Elation Systems. The Elation Systems name, the Elation Systems logo and the product names associated with the Service are trademarks of Elation Systems or third parties, and no right or license is granted to use them.

#### 6. Third Party Interactions

During use of the Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party. Elation Systems and its licensors shall have no liability obligation or responsibility for any such correspondence purchase or promotion between you and any such third-party. Elation Systems does not endorse any sites on the Internet that are linked through the Service. Elation Systems provides these links to you only as a matter of convenience, and in no event shall Elation Systems or its licensors be responsible for any content products, or other materials on or available from such sites. Elation Systems provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

#### 7. Charges and Payment of Fees

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. Payments may be made annually monthly, or quarterly, consistent with the Initial Term, or as otherwise mutually agreed upon. Elation Systems reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail.

#### 8. Billing and Renewal

Elation Systems charges and collects for use of the Service. Elation Systems will automatically renew and bill your credit card or issue an invoice to you (a) every month for monthly licenses, (b) every quarter for quarterly licenses, (c) each year on the subsequent anniversary for annual licenses, or d) as otherwise mutually agreed upon. Fees for other services will be charged on an as-quoted basis. Elation Systems' fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be

responsible for payment of all such taxes, levies or duties, excluding only United States (federal or state) taxes based solely on Elation Systems' income.

You agree to provide Elation Systems with complete and accurate billing and contact information. This information includes our legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, Elation Systems reserves the right to terminate your access to the Service in addition to any other legal remedies.

Unless Elation Systems in its discretion determines otherwise: (i) entities with headquarters and a majority of users resident in the United States will be billed in U.S. dollars and subject to U.S. payment terms and pricing schemes.

If you believe your bill is incorrect, you must contact us in writing within 15 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

#### 9. Non-Payment and Suspension

In addition to any other rights granted to Elation Systems herein, Elation Systems reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 2.0% per month on any outstanding balance or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User license during any period of suspension. If you or Elation Systems initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charge and Payment of Fees schedule issued by Elation Systems. You agree that Elation Systems may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.

Elation Systems reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the service. You agree and acknowledge that Elation Systems has no obligation to retain your Data and that such Customer Data may be irretrievably deleted if your account is 60 days or more delinquent.

#### 10. Termination upon Expiration/Reduction in number of Licenses

This Agreement commences on the Effective Date. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term (or one year, if the Initial Term is greater than one year) at Elation Systems' then current fees. Either party may terminate this Agreement effective only upon the expiration of the then current License Term, by notifying the other part in writing at least five (5) business days prior to the date of the invoice for the following term. In the case of free trials, notifications provided through the Service indicating the remaining number of days in the free trial shall constitute notice of termination. In the event this Agreement is terminated, Elation Systems will make available to you a file of the Customer Data, within 30 days of termination if you so request at the time of

termination. You agree and acknowledge that Elation Systems has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

#### 11. Termination for Cause

Any breach of your payment obligations or unauthorized use of the Elation Systems Technology or Service will be deemed a material breach of this Agreement. Elation Systems, in its sole discretion, may terminate your password account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, Elation Systems may terminate a free account at any time in its sole discretion. You agree and acknowledge that Elation Systems has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

#### 12. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Elation Systems represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online Elation Systems help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

#### 13. Mutual Indemnification

To the extent allowable by law, you shall indemnify and hold Elation Systems its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Elation Systems (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Elation Systems of all liability and such settlement does not affect Elation Systems' business or Service); (c) provides to you all available information and assistance and (d) has not compromised or settled such claim.

Elation Systems shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Elation Systems of its representations or warranties; or (iii) a claim arising from breach of his Agreement



by Elation Systems; provided that you (a) promptly give written notice of the claim to Elation Systems; (b) give Elation Systems sole control of the defense and settlement of the claim (provided that Elation Systems may not settle or defend any claim unless it unconditionally release you of all liability); (c) provide to Elation Systems all available information and assistance; and (d) have not compromised or settled such claim. Elation Systems shall have no indemnification obligation, and you shall indemnify Elation Systems pursuant to this Agreement for claims arising from an infringement arising from the combination of the Service with any of your products, service, and hardware or business process.

#### 14. Disclaimer of Warranties

ELATION SYSTEMS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. ELATION SYSTEMS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY ELATION SYSTEMS AND ITS LICENSORS.

#### 15. Internet Delays

ELATION SYSTEMS' SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ELATION SYSTEMS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

#### 16. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS

BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 17. Additional Rights

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

#### 18 Local Laws and Export Control

This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the European Union. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exempted or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S. and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

#### 19. Notice

Elation Systems may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in Elation Systems' account information or by written communication sent by first class mail or pre-paid post to your address on record in Elation Systems' account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Elation

Systems (such notice shall be deemed given when received by Elation Systems) at any time by any of the following: letter sent by confirmed facsimile to Elation Systems at the following fax numbers (whichever is appropriate): (925) 924-0387; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Elation Systems at the following addresses (whichever is appropriate): Elation Systems, 5000 Hopyard Road, Suite 405, Pleasanton, CA 94588. addressed to the attention of: Account Management.

#### 20. Modification to Terms

Elation Systems reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

#### 21. Assignment

This Agreement may not be assigned by you without the prior written approval of Elation Systems but may be assigned without your consent by Elation Systems to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

The parties acknowledge and agree that any disclosure of your data will in no way be construed to be an assignment, transfer, or conveyance of title to or ownership right in such data.

#### 22. General

With respect to U.S. Customers, this Agreement shall be governed by Florida law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Leon County, Florida. No text or information set forth on another purchase order, preprinted form or document other than an Order Form if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Elation Systems as a result of this agreement or use of the Service. The failure of Elation Systems to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Elation Systems in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between you and Elation Systems and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

### 23. Definitions

As used in this Agreement and in any Order forms now or hereafter associated herewith: "Agreement" means these online terms of use, any Order Forms, whether written or submitted online via the Online Order Center, and any materials available on the Elation Systems website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Elation Systems from time to time in its sole discretion; "Content" means the audio and visual information, documents, software products and services contained or made available to you in the course of using the Service; "Customer Data" means any data, information or material provided or submitted by you to the Service in the course of using the Service; "Effective Date" means the earlier of either the date this Agreement is accepted by selecting the "I Accept" option presented on the screen after this Agreement is displayed or the date you begin using the Service; "Initial Term" means the initial period during which you are obligated to pay for the Service equal to the billing frequency selected by you during the subscription process (e.g., if the billing frequency is quarterly, the Initial Term is the first quarter); "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "License Administrator(s)" means those Users designated by you who are authorized to purchase licenses online using the Online Order Center or by executing written Order Forms and to create User accounts and otherwise administer your use of the Service; "License Term(s)" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s); "Order Form(s)" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail); "Online Order Center" means Elation Systems' online application that allows the License Administrator designated by you to, among other things, add additional Users to the Service; "Elation Systems" means collectively Elation Systems, LLC, a California corporation, having its principal place of business at 5000 Hopyard Road, Suite 405, Pleasanton, CA 94588; "Elation Systems Technology" means all of Elation Systems' proprietary technology (including software, hardware, products processes, algorithms user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Elation Systems in providing the Service; "Service(s)" means the specific edition of Elation Systems' online customer relationship management, billing, data analysis, or other corporate services identified during the ordering process, developed, operated, and maintained by Elation Systems, accessible via a designated web site or IP address, or ancillary services rendered to you by Elation Systems, to which you are being granted access under this Agreement, including the Elation Systems Technology and the Content; "User(s)" means your employees representatives, consultants contractors or agents who are authorized to use the

Service and have been supplied user identifications and passwords by you (or by Elation Systems at your request).