

MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER'S AUTHORIZED USE OF ELEMENT SERVICES.

CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN. CUSTOMER SHALL BE BOUND BY THE TERMS OF THIS MASTER SUBSCRIPTION AGREEMENT INCLUDING IF CUSTOMER IS GRANTED A FREE TRIAL OF THE SERVICES.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, OR (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) OTHERWISE ACCESSING OR VIEWING THE SOFTWARE TO WHICH THIS AGREEMENT IS ATTACHED, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Element Standard, Inc.'s direct competitors are prohibited from accessing the Services, except with Element Standard, Inc.'s prior written consent.

This Agreement was last updated on February 27, 2023. It is effective between Customer and Element Standard, Inc. as of the date of Customer's accepting this Agreement.

1. DEFINITIONS

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" means this Master Subscription Agreement.

"Content" means information obtained by Element from its third party content providers and made available to Customer through the Services pursuant to an Order Form, as more fully described in the Documentation.

“Customer” means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.

“Customer Data” means electronic data and information submitted by or for Customer to the Services.

“Documentation” means the applicable Service’s documentation at www.finalfinal.law/msa and its usage guides and policies, as updated from time to time, accessible via www.finalfinal.law or login to the applicable Service.

“Element” means Element Standard, Inc., d/b/a Element Standard

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Order Form” means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and Element or any of their Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“Purchased Services” means Services that Customer or Customer’s Affiliate purchases under an Order Form or online purchasing portal, as distinguished from those provided pursuant to a free trial.

“Services” means the services that are ordered by Customer under an Order Form or online purchasing portal, or provided to Customer free of charge (as applicable) or under a free trial, and made available online by Element as described in the Documentation.

“Services” exclude Content.

“User” means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services provided by Element without charge, for whom a Service has been provisioned), and to whom Customer (or, when applicable, Element at Customer’s request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business, such third parties will be bound by the terms of this Agreement.

2. ELEMENT RESPONSIBILITIES

2.1 Provision of Purchased Services. Element will (a) make the Services and Content available to Customer pursuant to this Agreement, and the applicable Order Forms and

Documentation, (b) provide applicable support for the Purchased Services to Customer at no additional charge, and/or upgraded support if purchased, (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Element shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Element's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Element employees), Internet service provider failure or delay or denial of service attack, and (d) provide the Purchased Services in accordance with laws and government regulations applicable to Element's provision of its Services to its customers generally (i.e., without regard for Customer's particular use of the Services), and subject to Customer's use of the Services in accordance with this Agreement, the Documentation and the applicable Order Form.

2.2 **Protection of Customer Data.** Element will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in the Documentation. Element shall:

- (a) maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to providing the Services;
- (b) provide technical and organizational safeguards designed to prevent accidental, unlawful, or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or processing such information;
- (c) reasonably monitor its systems for vulnerabilities;
- (d) report to Customer any breach of security or unauthorized access to, or use of, Customer Data that Element detects or becomes aware of within a reasonable timeframe of such detection or discovery; and
- (e) use diligent and reasonable efforts to remedy such breach of security or unauthorized access in a timely manner.

2.3 **Element Standard Personnel.** Element will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Element's obligations under this Agreement, except as otherwise specified in this Agreement.

2.4 **Free Trial.** If Customer is granted or registers on Element's website for a free trial, Element will make the applicable Service(s) available to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period for which Customer registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by Customer for such Service(s), or (c) termination by Element in its sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA CUSTOMER ENTERS INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER, DURING CUSTOMER'S FREE TRIAL MAY BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD. CUSTOMER CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL (*E.G.*, FROM TEAM SUBSCRIPTION TO SOLO SUBSCRIPTION); THEREFORE, IF CUSTOMER PURCHASES A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, CUSTOMER MUST EXPORT CUSTOMER DATA BEFORE THE END OF THE TRIAL PERIOD OR CUSTOMER DATA MAY BE PERMANENTLY LOST.

NOTWITHSTANDING THE "REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS" SECTION AND "INDEMNIFICATION BY ELEMENT" SECTION BELOW, DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND ELEMENT SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE ELEMENT'S LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED \$1,000.00. WITHOUT LIMITING THE FOREGOING, ELEMENT AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO ELEMENT AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

CUSTOMER SHALL REVIEW THE APPLICABLE SERVICE'S DOCUMENTATION DURING THE TRIAL PERIOD TO BECOME FAMILIAR WITH THE FEATURES AND FUNCTIONS OF THE SERVICES BEFORE MAKING A PURCHASE.

3. USE OF SERVICES AND CONTENT

- 3.1 **Subscriptions.** Unless otherwise provided in the applicable Order Form or Documentation, (a) Purchased Services and access to Content are purchased as subscriptions for the term stated in the applicable Order Form or in the applicable online purchasing portal, (b) subscriptions for Purchased Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Element regarding future functionality or features.
- 3.2 **Usage Limits.** Services and Content are subject to usage limits specified in Order Forms and Documentation. If Customer exceeds a contractual usage limit, Element may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If, notwithstanding Element's efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Element's request, and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.
- 3.3 **Customer Responsibilities.** Customer will (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Element promptly of any such unauthorized access or use, and (d) use Services and Content only in accordance with this Agreement, Documentation and Order Forms. Any use of the Services in breach of the foregoing by Customer or Users that in Element's judgment threatens the security, integrity or availability of Element's services, may result in Element's immediate suspension of the Services, however Element will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension. Element's competitors are prohibited from accessing the Services, except with Element's prior written consent. For illustrative purposes, competitors include organizations engaged in developing and/or contemplating the development of a competing product or service or a department (*e.g.*, product development) in an organization developing a competing product or service.
- 3.4 **Usage Restrictions.** Customer will not (a) make any Service or Content available to anyone other than Customer or Users, or use any Service or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained

therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit (for example, but not limited to, sharing login credentials), or use any Services to access or use any of Element's intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, including but not limited to the structure, organization, sequence, color scheme, shapes, and methodology (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

4. **FEES AND PAYMENT**

4.1 **Fees.** Customer will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

4.2 **Invoicing and Payment.** Customer will provide Element with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Element. If Customer provides credit card information to Element, Customer authorizes Element to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in the "Term of Purchased Subscriptions" section below. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, Element will invoice Customer in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Element and notifying Element of any changes to such information. This information includes Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact.

4.3 **Overdue Charges.** If any invoiced amount is not received by Element by the due date, then without limiting Element's rights or remedies, (a) those charges may accrue late interest at the rate equal to the greater of one percent (1.0%) of the outstanding balance per month, or the maximum rate permitted by law, and to recover from Customer all reasonable costs and expenses incurred in the recovery of the overdue amounts from Customer, including its reasonable attorneys' fees and expenses and/or (b) Element may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the "Invoicing and Payment" section above. Company may require that all

outstanding fees and any applicable reconnection fee must be paid by Customer before such access and use is restored.

- 4.4 **Suspension of Service and Acceleration.** If any charge owing by Customer under this or any other agreement for services is 30 days or more overdue, (or 10 or more days overdue in the case of amounts Customer has authorized Element to charge to Customer's credit card), Element may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, Element will give Customer at least 10 days' prior notice that its account is overdue, in accordance with the "Manner of Giving Notice" section below for billing notices, before suspending services to Customer.
- 4.5 **Payment Disputes.** Customer agrees that it will notify Element within 30 days of receipt of an invoice from Element if it intends to dispute the amounts owed under such invoice, and that after 30 days all undisputed invoices will be deemed to have been accepted. Element will not exercise its rights under the "Overdue Charges" or "Suspension of Service and Acceleration" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 4.6 **Taxes.** Element's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is solely responsible for paying all Taxes associated with its purchases hereunder. If Element has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Element will invoice Customer and Customer will pay that amount unless Customer provides Element with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Element is solely responsible for taxes assessable against it based on its income, property and employees.

5. PROPRIETARY RIGHTS AND LICENSES

- 5.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Element, its Affiliates, its licensors and Content Providers reserve all of their right, title and interest in and to the Services and Content, including all of their related intellectual property rights, including but not limited to, copyright, patent, trademark, and/or trade secret rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 5.2 **Access to and Use of Content.** Customer has the right to access and use applicable Content subject to the terms of applicable Order Forms, this Agreement and the Documentation.
- 5.3 **License by Customer to Element.** As part of the Service, Customer or its Users may create or upload documents, images, files, annotations, notes, tags or other electronic records relating to litigation matters (e.g., Customer Data) to the Service. As between Customer and Element, Customer retains all ownership of the Customer Data, and Element

agrees that it obtains no rights in the Customer Data except the limited license set forth herein. Customer hereby grants Element a non-exclusive, fully paid up, royalty free, non-sublicensable license to use the Customer Data to provide the Service to Customer and Customer's Users and to support, manage and improve the Service, subject to the confidentiality obligations set forth in this Agreement.

5.4 Element Platform Data.

5.4.1 In the course of providing the Service, Element may collect statistical data and performance information, analytics, meta-data or similar information, generated through instrumentation and logging systems, regarding the operation of the Service, including Customer's use of the Service (the "Platform Data").

5.4.2 Nothing in this Agreement shall restrict Element's right to collect Platform Data or to use it for any internal business purpose, provided however, that (i) Platform Data will not include any Customer Data, and (ii) Element will not disclose Platform Data to any third party in a manner that allows such third party to identify Customer or any User, other than Element's employees, agents or service providers who are subject to obligations of confidentiality with respect to such Platform Data.

5.5 **License by Customer to Use Feedback .** Customer grants to Element and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any ideas, suggestion, enhancement request, recommendation, correction, improvement or other feedback provided by Customer or Users relating to the operation of Element's or its Affiliates' services.

5.6 **Marketing Rights.** Customer consents to the inclusion of its name and logo on the Element website and in Element's marketing materials, describing Customer as a customer of Element.

6. CONFIDENTIALITY

6.1 **Definition of Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Element includes the Services and Content, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt,

the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Element services.

- 6.2 **Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, Element may disclose the terms of this Agreement and any applicable Order Form to a subcontractor to the extent necessary to perform Element’s obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.
- 6.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.
7. **REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**
- 7.1 **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 7.2 **Element Warranties.** Element represents and warrants to Customer that Element will provide the Service to Customer in accordance with all applicable laws, rules, and regulations. For any breach of a warranty above, Customer’s exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.
- 7.3 **Customer Warranties.** Customer represents and warrants to Element that (i) Customer has all necessary right and authority to upload the Customer Data to the Service without

violating any third party's proprietary or privacy rights, including intellectual property rights; (ii) the Customer Data do not contain any viruses, worms, Trojan horses or other harmful or destructive code or content; and (iii) Customer will use the Service in compliance with all applicable laws, rules and regulations, and in accordance with the terms of this Agreement. Customer further represents, warrants, and covenants that each User shall be made aware of the restrictions and limitations contained in this Agreement, and that each such User shall be contractually bound to comply with the terms of the Agreement in connection with their use of the Service. Customer is responsible for all activities that occur under a Customer's User account. Customer further represents, warrants, and covenants that it is not developing, engaged in, or contemplating a competing product and does not have a product in development that could compete with Element's Services. In the event that Customer becomes aware of any unauthorized access to the Service or any unauthorized use thereof that may affect Company, Customer shall promptly notify Company and take whatever actions may be necessary to prevent any further unauthorized access or use.

- 7.4 **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ELEMENT PROVIDES THE SERVICE TO CUSTOMER ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR PARTICULAR PURPOSE, WHETHER ALLEGED TO ARISE BY LAW, BY USAGE IN THE TRADE, BY COURSE OF DEALING OR COURSE OF PERFORMANCE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ELEMENT DOES NOT WARRANT THAT THE SERVICE WILL BE DELIVERED OR PERFORMED ERROR-FREE OR WITHOUT INTERRUPTION OR THAT CUSTOMER WILL ACHIEVE ANY PARTICULAR BUSINESS RESULTS BY USE OF THE SERVICE.

8. **MUTUAL INDEMNIFICATION**

- 8.1 **Indemnification by Element.** Element will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Purchased Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against **Customer**"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Element in writing of, a Claim Against Customer, provided Customer (a) promptly gives Element written notice of the Claim Against Customer, (b) gives Element sole control of the defense and settlement of the Claim Against Customer (except that Element may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Element all reasonable assistance, at Element's expense. If Element receives information about an infringement or misappropriation claim related to a Service, Element may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Element's warranties under "Element Warranties" above, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the

remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (1) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (2) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by Element, if the Services or use thereof would not infringe without such combination; (3) a Claim Against Customer arises from Services under an Order Form for which there is no charge; or (4) a Claim against Customer arises from Content or Customer's breach of this Agreement, the Documentation or applicable Order Forms.

8.2 **Indemnification by Customer.** Customer will defend Element and its Affiliates against any claim, demand, suit or proceeding made or brought against Element by a third party alleging that any Customer Data or Customer's use of Customer Data with the Services infringes or misappropriates such third party's intellectual property rights, or arising from Customer's use of the Services or Content in an unlawful manner or in violation of the Agreement, the Documentation, or Order Form (each a "Claim Against **Element** "), and will indemnify Element from any damages, attorney fees and costs finally awarded against Element as a result of, or for any amounts paid by Element under a settlement approved by Customer in writing of, a Claim Against Element, provided Element (a) promptly gives Customer written notice of the Claim Against Element, (b) gives Customer sole control of the defense and settlement of the Claim Against Element (except that Customer may not settle any Claim Against Element unless it unconditionally releases Element of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against Element arises from Element's breach of this Agreement, the Documentation or applicable Order Forms.

8.3 **Exclusive Remedy.** This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claim described in this section.

9. **LIMITATION OF LIABILITY**

9.1 **Limitation of Liability.** FOR ALL EVENTS AND CIRCUMSTANCES, ELEMENT AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF, IN CONNECTION WITH, OR RELATING TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT EXCEED THE AMOUNT EQUAL TO THE AMOUNT THAT CUSTOMER PAID TO COMPANY UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRECEDING THE DATE THE LIABILITY FIRST ARISES; PROVIDED HOWEVER, THIS PARAGRAPH SHALL NOT APPLY TO ANY ACTION ARISING OUT OF, IN CONNECTION WITH, OR RELATING TO (a) AN ACCUSATION OF COMPANY'S INFRINGEMENT UPON ANY INTELLECTUAL PROPERTY RIGHT OR OTHER PROPRIETARY RIGHT OF A THIRD PARTY; (b)

THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF A PARTY;
AND/OR (c) LOSSES COVERED BY INDEMNIFICATION AS SET FORTH HEREIN.

- 9.2 **Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR: ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, INACCURACIES OF INFORMATION, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

10. TERM AND TERMINATION

- 10.1 **Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.
- 10.2 **Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Element's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.
- 10.3 **Customer Breach.** Element, in its sole discretion, may suspend or terminate Customer's username and password, account, or use of the Service and/or terminate this Agreement if Customer's payment is more than thirty days (30) past the due date for any subscription fees set forth in this Agreement, or if Customer otherwise materially breaches this Agreement and such breach has not been cured within ten (10) business days of notice of such breach. Upon such suspension or termination, the remaining amount due on the subscription shall accelerate with amount due within net fifteen (15) days. Any remaining amounts due after net fifteen (15) days shall be deemed late with late fees specified in "Overdue Charges" section above applied.
- 10.4 **Consequences of Termination or Expiration.** Upon termination or expiration of this Agreement, Customer shall immediately discontinue any access to or use of the Service. Element shall have the option, but not the obligation, to immediately take whatever action may be necessary to (i) destroy any Confidential Information of the Customer within its

possession, or (ii) return all such Confidential Information of the Customer within its possession to the Customer without prejudice to any other right or remedy of Element, in the event of termination or expiration of this Agreement, Customer will pay Element all amounts due hereunder up to the effective date of termination.

- 10.5 **Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) the other party is judged bankrupt or insolvent, makes a general assignment for the benefit of its creditors, a trustee or receiver is appointed for such party or any petition by or on behalf of such party is filed under any bankruptcy or similar laws.
- 10.6 **Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with the “Termination” section above, Element will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Element in accordance with the “Termination” section above, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to Element for the period prior to the effective date of termination.
- 10.7 **11.5 Surviving Provisions.** The sections titled “Fees and Payment,” “Proprietary Rights and Licenses,” “Representations, Warranties, Exclusive Remedies, and Disclaimers,” “Confidentiality,” “Disclaimers,” “Mutual Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Removal of Content,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement, and the section titled “Protection of Customer Data” will survive any termination or expiration of this Agreement for so long as Element retains possession of Customer Data.

11. GENERAL PROVISIONS

- 11.1 **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Element and Customer regarding Customer’s use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.
- 11.2 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Neither party shall hold itself out as an agent of the other party. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

- 11.3 **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 11.4 **Waiver .** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 11.5 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.
- 11.6 **Assignment .** Neither party may transfer or assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any purported assignment contrary to this section shall be void. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, Element will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 11.7 **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.
- 11.8 **Agreement to Governing Law, Jurisdiction, and Mandatory Venue.** This Agreement shall be governed and construed under the substantive law of Delaware, without regard to any conflict of laws principles in Delaware or Kansas, and any dispute arising out of or related to this Agreement in any way shall be brought exclusively in the state or federal courts in Kansas City, Kansas (federal) or Johnson County, Kansas (state). Transfer to any forum outside of Kansas City or Johnson County, even within Kansas, is expressly contrary to this agreement. Each party affirmatively and irrevocably submits to the jurisdiction and mandatory and exclusive venue of the state and federal courts in Kansas, recognizing that the creation of Element in Kansas gives rise to a meaningful connection to that forum.
- 11.9 **Force Majeure.** Except for payment obligations under this Agreement, neither party hereto shall be liable for any loss, damage, or penalty resulting from such party's failure to perform its obligations hereunder when such failure is due to events beyond its reasonable control, such as, without limitation, flood, earthquake, fire, acts of God, military insurrection, civil riot, or labor strikes.

- 11.10 **Amicable Resolution.** It is agreed that in the event of any dispute, claim or controversy arising out of or in connection with this Agreement, the Parties hereto shall seek to resolve the matter amicably through good faith discussions among the parties.
- 11.11 **Preliminary Injunction.** Notwithstanding any other provision of this Agreement, any Party shall be entitled to seek preliminary injunctive relief from any court of competent jurisdiction, pending the final decision or award of the arbitrators.