

Prior Terms of Service

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## I. Introduction

Welcome to Elai! These Elai Website Terms of Services ("Terms of Service") provides important information regarding your use of the Elai.io website ("Website"), and the products, software, platforms, and services provided on, from, or through the Website ("Services"), owned and operated by Elai, Inc. and its affiliates (collectively, "Elai," "we" or "us"). By using the Website and/or Services, you signify your assent to these Terms of Service and the [Elai Website Privacy Policy](#) ("Privacy Policy"), which is incorporated herein by reference. If you do not agree to any of these Terms of Service and/or the Privacy Policy, please do not use the Website or Services. These Terms of Service do not apply to the services and products that Elai provides to its enterprise customers. Those services and products are governed by separate agreements that Elai has with each such customer.

Elai reserves the right to change, modify, or update these Terms of Service and the Privacy Policy at any time. Posting of the updated Terms of Service or Privacy Policy on the Website will constitute notice to you of any such changes, although we may choose other types of notice for certain changes. Changes will become effective upon notice. Your continued use of the Website or Services following notice shall constitute your acceptance of all changes, and each use of the Website or Services constitutes your reaffirmation of your acceptance of these Terms of Service and the Privacy Policy. If you do not agree to the changes to these Terms of Service or the Privacy Policy, your sole and exclusive remedy will be to cease use of the Website and Services.

**IF YOU ARE LOCATED IN THE UNITED STATES, USE OF THE WEBSITES AND/OR SERVICES REQUIRES YOU TO ARBITRATE ALL DISPUTES ON AN INDIVIDUAL BASIS, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE (SEE SECTION 11 BELOW).**

## 2. Access to the Website and Services

a. License and Restrictions. These Terms of Service apply to all users who access or use the Website or Services. Subject to these Terms of Service, Elai grants you a non-transferable, non-exclusive, revocable, limited license to access and use the Website and Services for your own personal, non-commercial use. The rights granted to you in these Terms of Service are subject to the following restrictions:

- You shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Website or Services, whether in whole or in part, or any content displayed on the Website or Services.
- You shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Website or Services.
- You shall not access the Website or Services in order to build a similar or competitive website, product, or service.
- Except as expressly stated herein, no part of the Website or Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form or by any means.

Unless otherwise indicated, any future release, update, or other addition to functionality of the Website or Services shall be subject to these Terms of Service. All copyright and other proprietary notices on the Website or Services (or on any content displayed on the Website or Services) must be retained on all copies thereof.

b. Website or Services Changes. Elai reserves the right, at any time, to modify, suspend, or discontinue the Website or Services (in whole or in part) with or without notice to you. You acknowledge and agree that Elai will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Website or Services or any part thereof. You also acknowledge and agree that Elai will have no obligation to provide you with any support or maintenance in connection with the Website or Services.

c. Ownership. Excluding any User Content (as defined below) that you may provide, you acknowledge that all intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Website and Services and their content are owned exclusively by Elai. Neither these Terms of Service nor your access to the Website or Services transfers to you or any third party any rights, title, or interest in or to such intellectual property rights, except for the limited access rights expressly set forth above. Elai reserves all rights not granted in these Terms of Service. There are no implied licenses granted under these Terms of Service.

d. Feedback. If you provide Elai with any feedback or suggestions, you hereby assign to Elai all rights in such feedback and agree that Elai shall have the right to use and fully exploit such feedback and related information in any manner it deems appropriate. Elai will treat any feedback you provide as non-confidential and non-proprietary. You agree that you will not submit to Elai any information or ideas that you consider to be confidential or proprietary.

### 3. User Content

a. General. The Website and Services may allow you to submit information and content ("User Content"). You are solely responsible for your User Content. You assume all risks associated with use of your User Content, including any reliance on its accuracy, completeness, or usefulness by others, or any disclosure of your User Content that personally identifies you or any third party. You hereby represent or warrant that your User Content does not violate the Elai Acceptable Use Policy. Elai does not endorse any User Content or opinion, recommendation, belief, or advice expressed therein, and Elai expressly disclaims any and all liability in connection with User Content. Elai is not obligated to review any User Content before or after it is posted on the Website or Services, but reserves the right to remove, delete, or edit any User Content at any time without prior notice. Elai is not obligated to backup any User Content, and you are solely responsible for creating and maintaining your own backup copies of your User Content if you desire.

b. License. You hereby grant (and represent that you have the right to grant) to Elai an irrevocable, non-exclusive, royalty-free, fully paid, worldwide license to reproduce, distribute, publicly display and perform, prepare derivative works of, incorporate into other works, and otherwise use and exploit your User Content, and to grant sublicenses of the foregoing rights, for the sole purpose of including your User Content on the Website or Services. You hereby irrevocably waive (and agree to cause to be waived) any claims and assertions or moral rights or attribution with respect to your User Content.

c. Disclaimer. Since we do not control User Content, you acknowledge and agree that we are not responsible for any User Content, whether provided by you or by others. We make no guarantees regarding the accuracy, currency, suitability, appropriateness, or quality of any User Content. Your interactions with other users of the Website or Services are solely between you and such users. You agree that Elai will not be responsible for any loss or damage incurred as the result of any such interactions. If there is a dispute between you and any user of the Website or Services, we are under no obligation to become involved.

#### **4. Third-Party Links and Ads**

The Website and Services may contain links to third-party websites and services, or display advertisements for third parties that are not under the control of Elai, and Elai is not responsible for any such third-party links and ads. Elai provides access to these third-party links and ads only as a convenience to you, and does not review, approve, monitor, endorse, warrant, or make any representations with respect to such third-party links and ads. When you click on any of the third-party links and ads, the applicable third party's terms and policies apply, including its privacy and data gathering practices. You should make whatever investigation you feel is necessary or appropriate before proceeding with any transaction in connection with such third-party links and ads.

#### **5. Paid Services**

a. General. Some of the Services require a purchase to be made to get access to them ("Paid Services"). If you elect to purchase Paid Services, you agree to our storage of your payment information and understand that your Paid Services are personal to you, such that you may not transfer or make available your account name and password to others. Any distribution or sharing by you of your account name and password may result in cancellation of your Paid Services without refund and/or additional charges based on unauthorized use. We reserve the right, from time to time, to change the Paid Services, with or without prior notice to you.

b. Payment. Prices for all Paid Services are in U.S. dollars and exclude any and all applicable taxes, unless expressly stated otherwise. To the extent permissible under law, you are responsible for any applicable taxes, whether or not they are listed on your receipt or statement. All applicable taxes are calculated based on the billing information you provide us at the time of purchase. If you purchase Paid Services, you agree to pay, using a valid credit or debit card or other form of payment that we may accept from time to time ("Payment Method"), the applicable fees and taxes (if any) set forth in the offer that you accepted. We reserve the right, upon prior notice to you, to change the amount of any fees and to institute new fees, effective at the end of your current subscription period. All authorized charges will be billed to your designated Payment Method on the terms described in the specific offer. If payment cannot be charged to your Payment Method or your payment is returned to us for any reason, we reserve the right to either suspend or terminate your access to the unpaid-for Paid Services. It is your responsibility to ensure that sufficient funds are available to cover the charges for the Paid Services, and we have no liability for any overdraft or other fees that you may incur as a result of our processing of your payment. When sufficient funds are not available upon the renewal date, you authorize us to retry collection on your Payment Method. If your service has been suspended due to payment failure, any successful retry will reset the subscription period to the date of the successful payment.

c. Automatic Renewal Program. Upon your acceptance of an offer for the purchase of any subscription-based Paid Services, you will be enrolled in our automatic renewal program to help ensure that there is no interruption in your access to such Paid Services. Under this program, you authorize us to automatically renew your subscription at the end of the term of the subscription you purchased, and each subsequent term, for the same term length of the subscription you initially purchased (unless otherwise stated in the offer you accepted). Unless you change your renewal status as described below, at the time of each such renewal you authorize us to charge your designated Payment Method at the then-current, non-promotional price (unless otherwise stated in the offer you accepted) for the renewal of your subscription. If you no longer want to be enrolled in our automatic renewal program, you can change your renewal status at any time by logging into your profile at <https://app.elai.io/profile>, clicking on the "Manage Subscription" button, and then clicking on the "Cancel Subscription" button. Please note that completing these steps will only stop future automatic renewals of your current subscription and will not impact any automatic renewals that occurred prior to the date that you completed these steps.

d. Current Information. You must provide us with current, complete and accurate information for your Payment Method. You must promptly update all information to keep your Payment Method current, complete and accurate (such as a change in billing address, card number or expiration date), and you must promptly notify us if your Payment Method is cancelled (including if you lose your card or it is stolen), or if you become aware of a potential breach of security (such as an unauthorized disclosure or use of your name or password). Changes to such information can be made by logging into your profile at <https://app.elai.io/profile>, clicking on the "Manage Subscription" button, and then clicking on the edit icon next to your current Payment Method. If you fail to provide us with any of the foregoing information, you agree that you are responsible for fees accrued under your Payment Method. In addition, you authorize us to obtain updated or replacement expiration dates and card numbers for your credit or debit card as allowed or provided by your credit or debit card issuer.

e. No Refund Policy. All fees relating to Paid Services, including the initial fees and any subsequent automatic renewal fees (as described above), are non-refundable. In addition, any minutes you have purchased as part of the Paid Services that are not used by the end of the applicable billing cycle will be forfeited and cannot be carried over to the next billing cycle or refunded. If you initiate a chargeback or otherwise reverse a payment made with your Payment Method, we may in our discretion cancel your Paid Services immediately. If we successfully dispute the reversal, and the reversed funds are returned to us, you are not entitled to a refund or to have your Paid Services reinstated.

## 6. Term and Termination

Subject to this Section 6, these Terms of Service will remain in full force and effect while you use the Website and/or Services. You may terminate your access to the Services, including the Paid Services (if any), for any or no reason, at any time by contacting [Elai Support](#). We may suspend or terminate your rights to use the Website and/or Services at any time for any reason at our sole discretion, including for any use of the Website and/or Services in violation of these Terms of Service. Upon termination of your rights under these Terms of Service, your right to access and use the Website and Services will terminate immediately. If you have purchased Paid Services from us, any termination by you, or by us with cause, is subject to the no-refund policy described in Section 5(e) above. You understand that any termination of your right to access the Website and Services may involve deletion of your User Content from our live databases. Elai will not have any liability whatsoever to you for any termination of your rights under these Terms of Service, including for deletion of your User Content. Even after your rights under these Terms of Service are terminated, the provision of these Terms of Service that are likely to require performance, or have application to events that may occur after termination of these Terms of Service, will survive termination.

## 7. Copyright Infringement Policy

In compliance with the Digital Millennium Copyright Act ("DMCA"), we have established the procedure outlined below to address alleged copyright infringement on the Website or Services. If you believe that your work has been copied and has been posted on the Website or Services in a way that constitutes copyright infringement, you may provide us with notice of your complaint by providing our Designated Copyright Agent with the following information in writing:

- The electronic or physical signature of the owner of the copyright or a person authorized to act on the owner's behalf;
- Identification of the copyrighted work that you claim has been infringed;
- Identification of the material that is claimed to be infringing, with information about its location reasonably specific to permit us to locate the material;
- Your name, address, telephone number, and email address;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- A statement, made under penalty of perjury, that the above information in your notification is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf.

To be effective, your notification must be in writing and include the above information. Our Designated Copyright Agent to receive your notification is:

Name of Agent: Copyright Compliance Department  
Address: 600 River Avenue, Suite 100, Pittsburgh, PA 15212, USA  
Telephone Number of Designated Agent: (855) 765-2341  
Email Address Designated Agent: [copyrightnotice@elai.io](mailto:copyrightnotice@elai.io)

We, in our sole discretion, reserve the right to refuse additional User Content from users who have posted allegedly infringing material, to delete the material, and/or to terminate such users accounts.

After receiving a notification, we will process and investigate the notification and will take appropriate actions under the DMCA and other applicable intellectual property laws. Upon receipt of a notification that complies or substantially complies with the DMCA (as set forth above), we will act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity, and will act expeditiously to remove or disable access to any reference or link to material or activity that is claimed to be infringing. We will promptly take reasonable steps to notify the member that is the subject of the notification that it has removed or disabled access to such material.

If you are subject to a notification, you may provide us with a counter notification by providing our Designated Copyright Agent the following information in writing:

- Your physical or electronic signature;
- Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- A statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and
- Your name, address, and telephone number, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in which your address is located, or if your address is outside of the United States, for any judicial district in which we may be found and that you will accept service of process from the person who provided the initial notification of alleged infringement.

Upon receipt of a proper counter notification under the DMCA (as set forth above), we will promptly provide the person who provided the initial notification with a copy of the counter notification and inform that person that we will reinstate the removed material or cease disabling access to it in ten (10) business days. Additionally, we will replace the removed material and cease disabling access to it not less than ten (10), nor more than fourteen (14), business days following receipt of the counter notice, unless our Designated Copyright Agent first receives notice from the person who submitted the initial notification that such person has filed an action seeking a court order to restrain you from engaging in infringing activity relating to the material on the Services.

## 8. Disclaimers

YOU AGREE THAT YOUR USE OF THE WEBSITE AND SERVICES SHALL BE AT YOUR SOLE RISK. THE WEBSITE AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, ELAI AND ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, AND AGENTS DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, IN CONNECTION WITH THE ELAI WEBSITE AND SERVICES AND YOUR USE THEREOF, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT. ELAI MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE WEBSITE OR SERVICES WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE WEBSITE OR SERVICES, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO 90 DAYS FROM THE DATE OF FIRST USE. SOME JURISDICTIONS DO

NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## **9. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ELAI OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, OR AGENTS, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING FROM OR RELATED TO THESE TERMS OF SERVICE OR YOUR USE OF, OR INABILITY TO USE, THE WEBSITE OR SERVICES, EVEN IF ELAI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO AND USE OF THE WEBSITE AND SERVICES ARE AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR AGGREGATE LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THESE TERMS OF SERVICE OR YOUR USE OF, OR INABILITY TO USE, THE WEBSITE OR SERVICES, FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL NOT EXCEED THE GREATER OF \$100 OR THE AMOUNT YOU HAVE PAID US IN THE 12 MONTHS PRIOR TO THE DATE ON WHICH YOUR CLAIM AROSE. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

## **10. Indemnification**

To the extent permitted by applicable law, you agree to indemnify and hold harmless Elai and its affiliates, officers, directors, employees, contractors, and agents, from and against any and all claims, demands, damages, losses, liabilities, costs, and expenses (including but not limited to attorney's fees) arising from your acts or omissions, including without limitation (a) your use of and access to the Website and/or Services, (b) your violation of any term of these Terms of Service, (c) your violation of any third party right, or (d) your User Content. Elai reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Elai.

## **11. Mandatory Arbitration, Dispute Resolution and Class Action Waiver for US Customers**

PLEASE READ THIS SECTION CAREFULLY – IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT. YOU AND ELAI EACH AGREE THAT ANY AND ALL DISPUTES (AS THAT TERM IS DEFINED BELOW) THAT HAVE ARISEN OR MAY ARISE BETWEEN YOU AND ELAI SHALL BE RESOLVED EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION, RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT INDIVIDUAL CLAIMS IN SMALL CLAIMS COURT, IF YOUR CLAIMS QUALIFY.

If you reside in the United States, You and Elai and/or its parent companies, subsidiaries, affiliates, predecessors in interest, successors, or assigns and/or any and all of their respective directors, officers, employees and contractors (each an "Elai Entity" and, together, the "Elai Entities") agree to arbitrate any and all disputes and claims between them ("Dispute(s)"), except as otherwise specifically provided below. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award.

This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to: (1) Disputes related in any way to the Website, Services (including the Paid Services), billing, privacy, the User Content and other information and materials published by the Elai Entities on or through the Websites, advertising, or our communications with you; (2) Disputes arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (3) Disputes that arose before your agreement to these Terms of Service or any prior agreement; (4) Disputes that are currently the subject of purported class action litigation in which you are not a member of a certified class; and (5) Disputes that may arise after the termination of your use of the Services.

a. Contact Us First. If you intend to pursue or participate in any Dispute in arbitration or small claims court (solely to the extent specifically provided below), you must first notify us of the dispute in writing at least thirty (30) days in advance of initiating arbitration or the small claims court action (if applicable) and attempt to informally negotiate a resolution to the Dispute in good faith. Notice to us should be sent via overnight carrier or certified mail to: Elai, Inc., 600 River Avenue, Suite 100, Pittsburgh, PA 15212, USA, Attention: Legal Department. The notice of Dispute must: (i) include your name, address, phone number, and email address(es) used to register with or use the Services; (ii) describe the nature and basis of the Dispute; (iii) enclose and/or identify all relevant documents and/or information; and (iv) set forth the specific relief sought. If the applicable Elai Entity and you do not reach an agreement to resolve the Dispute within thirty (30) days after the notice is received, you may commence with a formal arbitration proceeding or small claims court action (if applicable).

b. Mandatory and Binding Arbitration Procedures. YOU UNDERSTAND THAT BY THIS PROVISION, YOU AND THE ELAI ENTITIES ARE FOREGOING THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. ANY CONTROVERSY CONCERNING THE VALIDITY, ENFORCEABILITY, REVOCABILITY AND SCOPE OF THIS AGREEMENT TO ARBITRATE SHALL BE DETERMINED BY THE ARBITRATOR AND

NOT BY THE COURT. THIS ARBITRATION CONTRACT IS MADE PURSUANT TO A TRANSACTION IN INTERSTATE COMMERCE AND ITS INTERPRETATION, APPLICATION, ENFORCEMENT AND PROCEEDINGS HEREUNDER SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT ("FAA").

- Rules. The arbitration will be governed by the Consumer Arbitration Rules of the American Arbitration Association ("AAA"), if applicable, as modified by this section. The AAA's rules and a form for initiating the proceeding are available at [www.adr.org](http://www.adr.org) or by calling the AAA at 800.778.7879 . The arbitration will be presided over by a single arbitrator selected in accordance with the AAA rules. The language of the arbitration will be English.
- Location. Unless otherwise agreed, the arbitration shall take place in city in which you reside. You and Elai may elect to have the arbitration conducted based solely on written submissions, subject to the arbitrator's discretion to require an in-person, virtual or telephonic hearing. In cases where an in-person hearing is held, you or the applicable Elai Entity may attend by telephone or virtually, unless the arbitrator requires otherwise.
- Cost Sharing. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this agreement. The applicable Elai Entity will pay as much of the filing, administration and arbitrator fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive, unless the arbitrator determines that a Dispute was filed for purposes of harassment or is patently frivolous. Reasonable documented attorneys' fees of both parties will be borne by the party that ultimately loses.
- Arbitrator's Decision. The arbitrator will decide the substance of the Dispute in accordance with the laws of the State of Delaware, USA, regardless of choice of law principles, and will honor all claims of privilege recognized by law. The arbitrator will have the power to award a party any relief or remedy that the party could have received in court in accordance with the law(s) that apply to the Dispute. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

c. Individual Arbitration. ANY PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION. NEITHER PARTY SHALL BE A MEMBER IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION OR PROCEEDING, AND THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT PARTY'S INDIVIDUAL DISPUTE OR CLAIM. UNLESS THE PARTIES AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S DISPUTES, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. THE ELAI ENTITIES DO NOT CONSENT TO CLASS ARBITRATION. THE PARTIES HEREBY WAIVE ANY RIGHT TO A JURY TRIAL. YOU ACKNOWLEDGE THAT THIS INDIVIDUAL ARBITRATION PROVISION IS MATERIAL AND ESSENTIAL TO THE ARBITRATION OF ANY DISPUTES BETWEEN THE PARTIES AND IS NON-SEVERABLE FROM THE AGREEMENT TO ARBITRATE CLAIMS. IF ANY PORTION OF

THIS CLASS ACTION WAIVER IS LIMITED, VOIDED, OR CANNOT BE ENFORCED, THEN THE PARTIES' AGREEMENT TO ARBITRATE SHALL BE NULL AND VOID.

d. Arbitration Opt-Out. You have the right to opt-out, for yourself and on behalf of anyone for whom you are acting as an agent, and not be bound by this arbitration provision by sending written notice of your decision to opt-out to: Elai, Inc. Arbitration Opt-Out, 600 River Avenue, Suite 100, Pittsburgh, PA 15212, USA. If opting out for yourself, this notice must be sent within thirty (30) days of your first use of the Website and/or Services or, if you are already a user of the Website and/or Services upon initial posting of this arbitration provision, within thirty (30) days of our email notice to you of this arbitration provision. If opting out as an agent for another user, this notice must be sent within (30) days of that other user's first use of the Website and/or Services or, if already a user of the Website and/or Services upon initial posting of this arbitration provision, within thirty (30) days of our email notice to them of this arbitration provision. Any opt out exercised, by you for yourself or as the agent for another, within thirty (30) days of our email notice of this arbitration provision, shall only apply to claims that have arisen since the posting of this arbitration provision.

The opt-out notice must state that you do not agree to this agreement to arbitrate and must include your name, address, phone number and email address(es) used to register with or use the Services, as well as the name, address, phone number and email address(es) of any person for whom you are opting out as their agent. You and any persons for whom you are opting out as an agent on their behalf must sign the opt-out notice for it be effective. Any opt-out not received within the applicable thirty (30) day period set forth above will not be valid.

Further, if you opt out of the agreement to arbitrate, you will remain bound by the Separate Class Action Waiver set forth below.

e. Separate Class Action Waiver. Separate and apart from the agreement to arbitrate set forth above and to the maximum extent permitted by law, the parties hereby independently waive any right to bring or participate in any class action for any Disputes. TO THE EXTENT PERMITTED BY LAW, YOU UNDERSTAND THAT BY AGREEING TO THIS CLASS ACTION WAIVER, YOU MAY BRING CLAIMS AGAINST THE ELAI ENTITIES ONLY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.

f. Judicial Forum for Disputes. If the agreement to arbitration above is found not to apply to you or to the Dispute, either as a result of your decision to opt-out of the agreement to arbitrate or a result of a decision by the arbitrator or a court order, you and the Elai Entities agree that any Disputes will be resolved exclusively by a state or federal court located in Allegheny County, Pennsylvania, and you and the Elai Entities submit exclusively to the personal jurisdiction and venue of such court.

g. Small Claims. You may choose to pursue your Dispute in small claims court (rather than arbitration) where jurisdiction and venue over the applicable Elai Entity and you are proper, and

where your claim does not include a request for any type of equitable relief, and so long as the matter advances on an individual (non-class) basis.

g. Injunctive Relief. Notwithstanding anything to the contrary in the foregoing, either party may bring suit in court seeking a temporary or preliminary injunctive relief, which shall then be subject to review by the arbitrator should such party further seek permanent injunctive relief in arbitration.

h. Time Limit to Pursue Dispute. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Website or Services or the Terms of Service or Privacy Policy must be filed within one (1) year after such claim or cause of action arose or be forever barred.

i. Changes to Arbitration Clause. We may make changes to this arbitration provision during the term of our Services to you. You may reject any material changes by sending us a written objection within thirty (30) days of the change to Elai, Inc., 600 River Avenue, Suite 100, Pittsburgh, PA 15212, USA, Attention: Legal Department. By rejecting any future material change, you are agreeing to arbitrate in accordance with the unmodified language of the previous version.

## **12. Governing Law and Forum Selection**

These Terms of Service will be governed by the laws of the State of Delaware, USA, without reference to its conflict of law principles. To the greatest extent permitted by law, if you reside outside of the United States, the state and federal courts in New Castle County, Delaware, USA, will have exclusive jurisdiction over any Disputes. In addition, if you reside in the United States, these same courts will have exclusive jurisdiction over any Disputes that are not subject to arbitration (e.g., you have opted out of arbitration) or actions to enforce any arbitration award, except for Disputes brought in small claims court. You and the Company consent to the jurisdiction of those courts and waive any objections as to personal jurisdiction or venue in those courts, or any other basis or right to seek to transfer or change venue to another court. You agree that the Website and Services shall be deemed passive, such that they do not give rise to personal jurisdiction over Elai, either specific or general, in jurisdictions other than the State of Delaware, USA.

## **13. Ability to Accept Terms of Service**

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Website and Services are not intended for children under 13. If you are under 13 years of age, then please do not use the Website or Services.

#### **14. Assignment**

These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Elai without restriction.

#### **15. General**

These Terms of Service, together with the Privacy Policy and any other legal notices published by Elai on the Website and Services, shall constitute the entire agreement between you and Elai concerning the Website and Services. If any provision of these Terms of Service is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Service, which shall remain in full force and effect. No waiver of any term of these Terms of Service shall be deemed a further or continuing waiver of such term or any other term, and Elai's failure to assert any right or provision under these Terms of Service shall not constitute a waiver of such right or provision. Elai shall not be liable for any delay in the performance hereunder due to causes beyond its control, including but not limited to an act of God, war, natural disaster, or other similar event.