



Last Updated: [November 4, 2022](#)

NGEN END USER TERMS OF USE

These NGEN End User Terms of Use (these "**Terms of Use**") set forth the terms and conditions upon which Inclusive Consulting Services, LLC or any of its affiliated companies (as applicable, "**Company**", "**IPC**", "**we**" or "**us**") offers you, an end user ("**User**", "**you**" or "**your**"), access to Company's proprietary cloud-based workflow management and data reporting software-as-a-service platform currently branded as "NGEN" for use by lenders, contractors, and program sponsors participating in financing programs marketed under the Smart-E Loan Program and similar financing programs (the "**System**" or "**NGEN**") which consists of technology hosted and administrated by Company and accessed remotely, via the cloud and made available through the provided website and/or any Company mobile application (collectively, the "**Site**"), along with any related Services (as defined below). Access to the System and Services may be provide either by an authorized customer of Company who has entered into a valid and current subscription with Company to access the System ("**Administrator**") and/or directly by Company on behalf of such Administrator. Access to the System and Services is provided solely in accordance with, and subject to, these Terms of Use and any additional Company policy, terms and conditions applicable to specific Company products or services and any other applicable terms and conditions entered into by you and Company in writing or otherwise as made available by Company through the Site from time to time (collectively, the "**Additional Terms**").

This is a legally enforceable contract. By clicking "I Agree" or by accessing or otherwise using the System, you agree to be bound by these Terms of Use and any applicable Additional Terms, all of which are hereby incorporated into these Terms of Use by reference. If you do not agree to these Terms of Use and such Order and Additional Terms, do not access or use the System.

From time to time, Company may modify these Terms of Use, effective immediately upon posting such modified Terms of Use on the Site. While we may note the date of the last update to these Terms of Use on the Site and provide additional notice of such modifications, you acknowledge and agree that you must periodically check the Site for any updates. Your continued access to or use of the System constitutes your immediate acceptance of the modified Terms of Use. Except to the extent expressly contemplated by these Terms of Use, no other amendment, modification or supplement of any provision of these Terms of Use will be valid or effective unless made in writing and signed by duly authorized representatives of both parties.

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THESE TERMS OF USE, UNDERSTANDS THEM, AND AGREES TO BE BOUND BY THEIR TERMS, AND THAT THE PERSON ACCEPTING THESE TERMS OF USE ON ITS BEHALF HAS BEEN

AUTHORIZED TO DO SO. THE PERSON ACCEPTING THESE TERMS OF USE ON USER'S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND USER TO THESE TERMS OF USE.

1. DEFINITIONS. The following capitalized terms will have the following meanings whenever used in these Terms of Use.

- 1.1. **"Company Party"** means, collectively, Company and its affiliates and licensors.
- 1.2. **"Documentation"** means any user manual, guide or handbook, technical manuals, operating rules, acceptable use policies or other materials related to use of the System provided or made available by Company through the Site or otherwise in connection with the System.
- 1.3. **"Privacy Policy"** means Company's privacy policy, currently posted at www.inclusiveprosperitycapital.org/ngenlegal.
- 1.4. **"User Data"** means data in electronic form input or collected through the System by or from User.

2. THE SYSTEM.

- 2.1. Use of the System. User may access and use the System pursuant to the terms and conditions hereof for so long as the Administrator has validly granted to the User the right to use the System as permitted pursuant to the terms of the Administrator's agreement with Company, or for so long as Company authorizes the User to access the System as an authorized user thereof, whichever is shorter (such period, the **"Access Period"**). Without prejudice to any other rights, Company may terminate User's right to access and use the System if (a) Administrator fails to comply with the NGEN Master Terms of Service either User or the Administrator fail to comply with these Terms of Use, the Privacy Policy or any Additional Terms; or (b) Company determines in its sole discretion that it is not in Company's best interest to continue to provide the User with access and use of the System.
- 2.2. Restrictions on Use of the System. User shall not: (a) use the System for service bureau or time-sharing purposes or in any other way allow third parties to exploit the System; (b) provide System passwords or other log-in information to any third party; (c) share non-public System features or content with any third party; (d) access the System in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the System, or to copy any ideas, features, functions or graphics of the System; or (e) engage in web scraping or data scraping on or related to the System, including without limitation collection of information through any software that simulates human activity or any bot or web crawler. In the event that it suspects any breach of the requirements of this Section, Company may suspend User's access to the System without advanced notice, in

addition to such other remedies as Company may have. This Agreement does not require that Company take any action against User or any third party for violating the restrictions set forth in this Agreement, but Company is free to take any such action it sees fit.

- 2.3. Documentation. User may reproduce and use the Documentation solely as necessary to support its use of the System.
- 2.4. Continuous Development. The parties acknowledge and agree that the Company Parties may continually develop, deliver and provide to User ongoing innovation to the System in the form of additional or modified features, functionality, capability and services. Accordingly, Company reserves the right to modify the System from time to time in its sole discretion.

3. ADMINISTRATOR. Company will interact with the Administrator that operates and manages User's access to the System. An Administrator is not an agent of Company and is not authorized to make any representations or warranties on behalf of Company regarding the System or its use. User expressly acknowledges and agrees that Company may rely on the instructions and authorization of the Administrator with respect to User's use and access to the System.

4. USER DATA & PRIVACY.

- 4.1. Privacy Policy. The parties agree to the terms and conditions set forth in the Privacy Policy, which is hereby incorporated into these Terms of Use. User acknowledges and agrees that the Privacy Policy applies only to the System and does not apply to any third party website or service linked to the System or recommended or referred to through the System or by Company's staff.
- 4.2. Risk of Exposure. User recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the System, User assumes such risks. Company offers no representation, warranty, or guarantee that User Data will not be exposed or disclosed through errors or the actions of third parties. The System is hosted in data centers located in the United States managed by Amazon Web Services ("**AWS**"), which is solely responsible for the security of its actual data centers and the AWS cloud that hosts the System. By entering into these Terms of Use, User agrees to comply with the AWS Customer Agreement (located at <http://aws.amazon.com/agreement>, or such other location on the AWS website as AWS may post such agreement from time to time) as such agreement may be modified by AWS at any time and from time to time, as it applies to User.
- 4.3. Data Accuracy. User shall be solely responsible and liable, and Company shall have no responsibility or liability for the accuracy of data uploaded to the System by User, including without limitation User Data and any other data uploaded by Administrator or any other user of the System.

- 4.4. Data Deletion. For up to ninety (90) days after the date User's or User's Administrator's account is terminated, so long as the User and Customer are in good standing with the Company, Company will, upon written request by User, use commercially reasonable efforts to provide User with a copy of its User Data in a format supported by the System. After such period as specified in this section, Company may permanently erase User Data and User acknowledges and agrees that no Company Party will have any liability for such deletion, or for any deletion of User Data resulting from the instructions from, acts, or omissions of User's Administrator..
- 4.5. Excluded Data. User represents and warrants that User Data does not and will not include, and User has not and shall not upload or transmit to Company's computers or other media, any data ("**Excluded Data**") regulated pursuant to the Gramm-Leach-Bliley Act (GLBA), the Health Insurance Portability and Accountability Act (HIPAA) the Children's Online Privacy Protection Act (COPPA) and/or the Sarbanes-Oxley Act (SOX) (the "**Excluded Data Laws**"). USER RECOGNIZES AND AGREES THAT: (a) COMPANY HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) COMPANY'S SYSTEMS ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.
- 4.6. Aggregate & De-Identified Data. Notwithstanding the provisions above of this Article 4, Company may process, store, display, reproduce, modify, translate, sell, publicize, create derivative works from, make available, or otherwise exploit or use Aggregate Data and De-Identified Data in any way, in its sole discretion, including without limitation for purposes of advertising, marketing, developing, maintaining, improving, offering and delivering Company's current and future products and services as they may be provided to User or other customers of Company. "**Aggregate Data**" refers to summaries of User Data, or of data that includes User Data, or other data that Company collects, generates or aggregates from multiple customers of Company in each case that do not include the names or addresses or other personally identifiable information of User. "**De-Identified Data**" refers to User Data that has been de-identified such that the names and addresses and any other personally identifiable information of User has been removed.

5. USER'S RESPONSIBILITIES & RESTRICTIONS.

5.1. Acceptable Use.

- (a) Prohibited Uses. You may use the System only for lawful purposes and in accordance with this Agreement. Without limitation of the generality of the foregoing, you expressly agree not to:
- (i) Use the System in any way that violates any applicable federal, state, local, or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other

countries).

- (ii) Use the System for the purpose of exploiting, harming, or attempting to exploit or harm, minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.
- (iii) Use the System to send, knowingly receive, upload, download, use, or re-use any material which violates the rights of any individual or entity established in any jurisdiction.
- (iv) Use the System to transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain letter," "spam," or any other similar solicitation.
- (v) Use the System to impersonate or attempt to impersonate the Company, a Company employee, another user, or any other person or entity (including, without limitation, by using e-mail addresses or screen names associated with any of the foregoing).
- (vi) Use the System to engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the System, or which, as determined by us, may harm the Company or users of the System or expose them to liability.
- (vii) Use the System in any manner that could disable, overburden, damage, or impair the System or interfere with any other party's use of the System, including their ability to engage in real time activities through the System.
- (viii) Use any robot, spider, or other automatic device, process, or means to access the System for any purpose, including monitoring or copying any System traffic or resources available on the System.
- (ix) Use any manual process to monitor or copy any System traffic or resources available on the System or for any other unauthorized purpose without our prior written consent.
- (x) Use any device, software, or routine that interferes with the proper working of the System.
- (xi) Introduce any viruses, trojan horses, worms, logic bombs, or other software or material which is malicious or technologically harmful.
- (xii) Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the System or any server, computer, database, or other resource or element connected to the System.
- (xiii) Violate, attempt to violate, or knowingly facilitate the violation of the security or integrity of the System.
- (xiv) Otherwise attempt to interfere with the proper working of the System.

(b) Content Standards. You agree not to use the System to send, knowingly receive, upload, download, use, or re-use any material that:

- (i) Contains any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory, or otherwise objectionable.

- (ii) Promotes sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age.
- (iii) Infringes any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person.
- (iv) Violates the legal rights (including the rights of publicity and privacy) of others or contains any material that could give rise to any civil or criminal liability under applicable laws or regulations.
- (v) Is likely to deceive any person.
- (vi) Promotes any illegal activity, or advocates, promotes, or assists any unlawful act.
- (vii) Causes annoyance, inconvenience, or needless anxiety or is likely to upset, embarrass, alarm, or annoy any other person.
- (viii) Impersonates any person, or misrepresents your identity or affiliation with any person or organization.
- (ix) Involves commercial activities or sales, such as contests, sweepstakes, and other sales promotions, barter, or advertising.
- (x) Gives the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.

(c) Monitoring and Enforcement. Company, in its sole discretion, will determine whether your conduct is in compliance with these acceptable use guidelines described in these Terms of Use. Specifically, you acknowledge and agree that Company has the right to:

- (i) Monitor your use of the System for any purpose in our sole discretion and as we see fit.
- (ii) Take any action we deem necessary or appropriate in our sole discretion if we believe a user's conduct violates the acceptable use guidelines described in these Terms of Use, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the System or the public, or could create liability for the Company.
- (iii) Disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy.
- (iv) Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the System.
- (v) Terminate or suspend your access to all or part of the System for any or no reason, including without limitation, any violation of the acceptable use guidelines described in these Terms of Use.

5.2. Unauthorized Access. User shall take reasonable steps to prevent unauthorized access to the System, including without limitation by protecting its passwords and other log-in information. User shall notify Company immediately of any known or

suspected unauthorized use of the System or breach of its security and shall use best efforts to stop said breach.

- 5.3. Compliance with Laws. In its use of the System, User shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of User Data.

6. IP & FEEDBACK

- 6.1. IP Rights to the System. Company retains all right, title, and interest in and to the System, including without limitation all software used to provide the System and all graphics, user interfaces, logos, and trademarks reproduced through the System. These Terms of Use do not grant User any intellectual property license or rights in or to the System or any of its components. User recognizes that the System and its components are protected by copyright and other laws.

- 6.2. Feedback. Company has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that User or other users provide to Company, and nothing in these Terms of Use or in the parties' dealings arising out of or related to these Terms of Use will restrict Company's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting User other users in question. Feedback will not constitute User's confidential information. "Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Company's products or services.

7. CONFIDENTIAL INFORMATION. "Confidential Information" refers to any information about Company's business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential" Company discloses to User and any other nonpublic, sensitive information User should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is in User's possession at the time of disclosure; (b) is independently developed by User without use of or reference to Confidential Information; (c) becomes known publicly, before or after disclosure, other than as a result of User's improper action or inaction; or (d) is approved for release in writing by Company.

- 7.1. Nondisclosure. User shall not use Confidential Information for any purpose other than as necessary for its use of the System as expressly authorized under these Terms of Use (the "**Purpose**"). User: (a) shall not disclose Confidential Information to any employee or contractor of User unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with User with terms no less restrictive than those of this Article 7; and (b) shall not disclose Confidential Information to any other third party without Company's prior written consent. Without limiting the generality of the foregoing, User shall protect Confidential Information

with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. User shall promptly notify Company of any misuse or misappropriation of Confidential Information that comes to User's attention. Notwithstanding the foregoing, User may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. User shall give Company prompt notice of any such legal or governmental demand and reasonably cooperate with Company in any effort to seek a protective order or otherwise to contest such required disclosure, at Company's expense.

- 7.2. Injunction. User agrees that breach of this Article 7 would cause Company irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Company will be entitled to injunctive relief against such breach or threatened breach.
- 7.3. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 7.1 above (*Nondisclosure*) will terminate three (3) years after the date of disclosure; provided that such obligations related to Confidential Information constituting Company's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of these Terms of Use, User shall return all copies of Confidential Information to Company or certify, in writing, the destruction thereof.
- 7.4. Retention of Rights. These Terms of Use does not transfer ownership of Confidential Information or grant a license thereto. Company will retain all right, title, and interest in and to all Confidential Information.
- 7.5. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), User is on notice and acknowledges that, notwithstanding the foregoing or any other provision of these Terms of Use:
- (a) *IMMUNITY*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
 - (b) *USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

8. USER REPRESENTATIONS & WARRANTIES; DISCLAIMER.

8.1. User Representations and Warranties. User represents and warrants that: (i) it has the full right and authority to enter into, execute, and perform its obligations under these Terms of Use and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by these Terms of Use; (ii) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the System; and (iii) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.

8.2. No Company Warranties; Disclaimer. USER ACCEPTS THE SYSTEM “AS IS” AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) COMPANY HAS NO OBLIGATION TO INDEMNIFY OR DEFEND USER AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (c) COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT USER DATA WILL REMAIN PRIVATE OR SECURE.

9. INDEMNIFICATION. User shall defend, indemnify, and hold harmless each Company Party and their respective officers, directors, shareholders, members, partners, affiliates, subsidiaries, agents, successors, and assigns (collectively “**Company Associates**”) against any third party claim, suit, or proceeding (each, an “**Indemnified Claim**”) arising out of or related to User's alleged or actual use of, misuse of, or failure to use the System, including without limitation: (a) claims by User its employees, contractors, or agents; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including User Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the System through User’s account, including without limitation by User Data; and (d) claims that use of the System through User’s account harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. Indemnified Claims include, without limitation, claims arising out of or related to Company’s negligence. User’s obligations set forth in this Article 9 include retention and payment of attorneys and payment of court costs, as well as settlement at User’s expense and payment of judgments. Company will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing

affirmative obligations.

10. LIMITATION OF LIABILITY.

10.1. IN NO EVENT WILL COMPANY BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS OF USE OR THE SYSTEM UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER USER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OF USE UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED ONE HUNDRED DOLLARS (\$100.00).

10.2. If applicable law limits the application of the provisions of this Article 10, Company's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Company's liability limits and other rights set forth in this Article 9 apply likewise to Company's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

11. MISCELLANEOUS.

11.1. Term; Termination; Survival. These Terms of Use shall remain in force and effect until the expiration of the Access Period. Upon termination of these Terms of Use, User shall cease all use of the System and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of User to pay fees incurred before termination; (b) Articles and Sections 4.5 (Excluded Data), 4.6, (Aggregate & De-Identified Data), 6 (IP & Feedback), 7 (Confidential Information), 8.2 (No Company Warranties; Disclaimer), 9 (Indemnification), and 10 (Limitation of Liability); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

11.2. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Nothing in these Terms of Use shall be construed to create any association, partnership, joint venture, employee, or agency relationship between the parties for any purpose. Neither party has any authority, nor shall hold itself out as having any authority, to bind the other party and neither party shall make

any agreements or representations on the other party's behalf with the other party's prior written consent.

- 11.3. Force Majeure. In no event shall Company be liable to User or any other party, or be deemed to have breached these Terms of Use, for any failure or delay in performing its obligations under these Terms of Use, if and to the extent such failure or delay is caused by any circumstances beyond Company's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, epidemic, pandemic, public health emergency, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
- 11.4. Assignment & Successors. User may not assign these Terms of Use or any of its rights or obligations hereunder without Company's express written consent. Except to the extent forbidden in this Section 11.2, these Terms of Use will be binding upon and inure to the benefit of the parties' respective successors and assigns. Except for Section 9 as it applies to Company Associates, nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity other than the parties hereto and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.
- 11.5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of these Terms of Use invalid or otherwise unenforceable in any respect. In the event that a provision of these Terms of Use is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of these Terms of Use will continue in full force and effect.
- 11.6. No Waiver. Neither party will be deemed to have waived any of its rights under these Terms of Use by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of these Terms of Use will constitute a waiver of any other breach of these Terms of Use.
- 11.7. Choice of Law & Jurisdiction. These Terms of Use will be governed solely by the internal laws of the State of California, including applicable U.S. federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. Any legal suit, action, or proceeding arising out of or related to these Terms of Use or the licenses granted hereunder will be instituted exclusively in the federal and state courts having jurisdiction in the State of Connecticut, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
- 11.8. Conflicts. In the event of any conflict between these Terms of Use and any Additional

Terms, the terms of these Terms of Use will govern.

- 11.9. Construction. The parties agree that the terms of these Terms of Use result from negotiations between them. These Terms of Use will not be construed in favor of or against either party by reason of authorship.
- 11.10. Technology Export. User shall not: (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export any software provided by Company or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, User shall not permit any third party to access or use the System in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
- 11.11. Entire Agreement. These Terms of Use set forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 11.12. Amendment. Company may amend these Terms of Use from time to time by posting an amended version on the Site. User's continued access to use of the System following the effective date of an amendment will confirm User's consent thereto. These Terms of Use may not be amended in any other way except through a written agreement by authorized representatives of each party. Notwithstanding anything to the contrary herein, Company may revise the Privacy Policy at any time by posting a new version on the Site, and such new version will become effective on the date it is posted.