NGEN MASTER TERMS OF SERVICE

These NGEN Master Terms of Service (these "**Terms of Service**") 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, California Alternative Energy and Advanced Transportation Financing Authority ("**Customer**", "**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 or similar financing programs (the "**System**" or "**NGEN**") which consists of technology hosted and administered by Company and accessed remotely, via the cloud and made available through a uniform resource locator provided by the Company and/or any Company mobile application (collectively, the "**Site**"), along with any related Services (as defined below). Access to the System and Services is provided solely in accordance with, and subject to, these Terms of Service, the Order (as defined below), and any additional services agreement, other terms and conditions or terms of service applicable to specific Company products or services and any other applicable terms and conditions entered into by you and Company in writing or otherwise, including the Customer Agreement (as defined below) as made available by Company through the Site from time to time (collectively, the "**Additional Terms**").

These terms are incorporated into the services agreement (the "**Customer Agreement**") between Customer and Company, subject to the order of priority listed in the Customer Agreement with respect to any conflicts between this Agreement and the Additional Terms.

1. DEFINITIONS. The following capitalized terms will have the following meanings whenever used in this Agreement.

1.1.   "**Agreement**" for the purposes of Company-provided documents, means these Terms of Service along with all Orders any applicable Additional Terms, and all exhibits or attachments hereto or thereto, all of which are hereby incorporated herein by reference,

1.2.   "**Company Party**" means, collectively, Company and its affiliates and licensors.

1.3.   "**Customer Users**" means any lenders, contractors, or other third parties Customer gives access to the System, including without limitation such lenders', contractors' and other third parties' agents and employees.

1.4.   "**Customer Data**" means data in electronic form input to or collected through the System by or from Customer, including without limitation by any Customer User or by any other User.

1.5.	"**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.

1.6.	"**Order**" means the sales order or other ordering documents for purchases hereunder, including addenda thereto, that are entered into between Company and Customer from time to time in writing or electronically (including through Company's customer relationship management system or through the Site). Each Order Form will be deemed incorporated into this Agreement by reference.

1.7.	"**Privacy Policy**" means Company's privacy policy, currently posted at www.inclusiveprosperitycapital.org/ngenlegal, as such privacy policy may be updated from time to time in accordance with its terms.

1.8.	"**Program**" means any financing program marketed under the Smart-E Loan Program, or similar financing program, sponsored by Customer.

1.9.	"**SLA**" means Company's standard service level agreement attached as an Attachment to the Customer Agreement .

1.10.	"**Term**" is defined in Section 10.1 below.

1.11.	"**User**" means any company or individual who uses the System on Customer's behalf or through Customer's account or passwords, whether authorized or not, including without limitation Customer Users.

1.12.	"**End User Terms of Use**" means Company's standard End User Terms of Use, currently posted at www.inclusiveprosperitycapital.org/ngenlegal, as may be updated from time to time by Company in accordance with the terms thereof.

## 2.	THE SYSTEM.

2.1.	<u>Use of the System</u>. Subject to the terms and conditions of this Agreement, during the applicable Subscription Term, Customer may access and use the System, including such features and functions as the applicable Order may specify, in accordance with the applicable Documentation, any applicable Additional Terms, and the terms and conditions of this Agreement.

2.2.	<u>Restrictions on Use of the System</u>: Customer 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, except Customer Users as specifically authorized by this Agreement; (b) provide System passwords or other log-in information to any third party, except Customer Users as specifically authorized by this Agreement; (c) share non-public System features or content with any third party, except Customer Users as specifically authorized by this Agreement; (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, including without limitation by Users, Company may suspend Customer'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 Customer or any User or other 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. <u>Documentation</u>: Customer may reproduce and use the Documentation solely as necessary to support Users' permitted use of the System.

2.4. <u>Authorized Users</u>. Customer must provide Company with current, complete and accurate information (including its email address) as requested in the Order or otherwise prompted by the applicable registration form in order to register for use of the System. Customer must identify one or more employees of Customer who will be authorized to have access to and use the System as administrators on behalf of Customer, subject to any limitations set forth in the applicable Order or Privacy Policy ("**Customer Administrators**"). Subject to the remaining provisions below of this Section, Customer Administrators may authorize Customer Users to access and use the System in such numbers and according to such restrictions as are set forth in the applicable Order, solely for the purposes of administering Customer's Program(s). Customer shall require that each Customer User agree to be bound by the then-standard End User Terms of Use as a condition to each Customer User's access and use of the System. Additionally, Company may, in its discretion (but shall not be obligated to) create accounts on behalf of Customer for Customer Users to access and use the System in accordance herewith. Customer shall make no representations or warranties regarding the System or any other matter, to any Customer User, User or any other third party, from or on behalf of any Company Party, and Customer shall not create or purport to create any obligations or liabilities for any Company Party. Company may reject any proposed Customer User for any reason that does not violate applicable law, in its sole discretion. Customer will not permit Customer Users to access and use the System except solely during the Term specified in the applicable Order. Company has no obligation to verify the identity of any person who gains access to the System through Customer's account. Customer is solely responsible for monitoring Customer Users' access to and use of the System, and for any failure by any Customer User to comply with this Agreement and the End User Terms of Use; a failure to comply with this Agreement or End User Terms of Use by a Customer User is a failure by Customer and Customer shall be jointly and severally liable to Company for Customer Users' compliance with this Agreement and the End User Terms of Use. Company shall have no obligation to provide support or other services, SLA remedies, if any, or other remedies to Customer Users.

2.5. <u>Continuous Development</u>. The parties acknowledge and agree that the Company Parties may continually develop, deliver and provide to Customer 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. While some modifications may be provided to Customer at no additional charge, in the event Company adds additional features, functionality, capability or services to the System, Company may, in its sole discretion, condition the implementation of such additional features, functionality, capability and services on Customer's payment of additional fees.

2.6. [<u>Service Levels</u>. Company shall provide the remedies listed in the SLA for any failure of the System listed in the SLA. Such remedies are Customer's sole and the exclusive remedy, and Company's sole exclusive liability, for any failure of the System, and Customer recognizes and agrees that if the SLA does not list a remedy for a given failure, it has no remedy; provided this sentence does not restrict any Customer right to terminate this Agreement in accordance with Section 11.2 where applicable. Company is not required to issue refunds or to provide any credits against payment under the SLA under any circumstances, including without limitation after termination of this Agreement. Company may revise the SLA at any time. If any such revision materially reduces service levels provided pursuant to an outstanding Order, the revisions will not go into effect with respect to such Order until the start of the Term beginning 45 or more days after Company posts the revision and so informs Customer.]

3. <u>**SYSTEM FEES.**</u>

3.1. <u>Fees</u>. Customer shall pay Company the fee set forth in each Order (the "**Subscription Fee**") for the Initial Term and for each Renewal Term. Unless otherwise specifically referenced in the Order, within 60 days of the end of each Renewal Term, Company may provide notice to Customer that it is instituting an updated schedule of fees (the "**Updated Subscription Fee**"). Upon receipt of the Updated Subscription Fee, Customer may (y) object in writing to the Updated Subscription Fee within 15 days of receipt of such notice and, unless Company agrees not to implement such Updated Subscription Fee, elect not to renew this Agreement in accordance with Section 11.1, or, (z) if Customer continues to use the System following the expiration of then-current Renewal Term, Customer shall be deemed to have consented to the Updated Subscription Fee for the new Renewal Term. In the event that Customer choses to object to the Updated Subscription Fee as provided in the preceding sentence, Company may elect not to renew the Agreement in accordance with Section 11.1. Company will not be required to refund fees under any circumstances. Company's invoices are due within 30 days of issuance. For late payment, Customer shall pay interest charges from the time the payment was due at the rate that is the lower of 1.5% per month or the highest rate permissible under applicable law.

3.2. <u>Taxes</u>. Amounts due under this Agreement are payable to Company without deduction and are net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value added tax withheld

at the source. If applicable law requires withholding or deduction of such taxes or duties, Customer shall separately pay Company the withheld or deducted amount. However, the prior two sentences do not apply to taxes based on Company's net income.

4. **CUSTOMER DATA & PRIVACY.**

4.1. <u>Use of Customer Data</u>. Unless it receives Customer's prior written consent, Company: (a) shall not access, process, or otherwise use Customer Data other than as necessary to facilitate the System; and (b) shall not intentionally grant any third party access to Customer Data, including without limitation Company's other customers, except subcontractors or third party service providers that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Company may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Company shall, to the extent permitted by applicable law, give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense. As between the parties, Customer retains ownership of Customer Data. For clarity, Aggregated Data and De-Identified Data (each as defined below) are expressly excluded from Customer Data.

4.2. <u>Data Security</u>. Company represents that it maintains commercially reasonable measures designed to help secure any Customer Data against accidental or unlawful loss, access or disclosure. 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 this Agreement, Customer 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 Customer.

4.3. <u>Privacy Policy</u>. The parties agree to the terms and conditions set forth in the Privacy Policy, which is hereby incorporated into this Agreement as Additional Terms. Customer 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.

4.4. <u>Risk of Exposure</u>. Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the System, Customer assumes such risks. Company offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties. Customer shall use, safeguard and periodically change passwords in a commercially reasonable manner and time, to prevent unauthorized access to the System. Customer is responsible to maintain the privacy and security

of Customer Users' login information, including user names and passwords, and not allow others to use the login information. Customer will notify Company immediately of any breach in secrecy, security, or unauthorized use or theft of any Customer User's login information (and provide properly documented evidence as reasonably requested by us). Customer is responsible for any and all actions taken by any Customer User or other person that has access to its accounts. You agree to immediately notify Company of any potential breaches of the login information and of the departure of any employee with access to the login information.

4.5. <u>Data Accuracy</u>. Customer shall be solely responsible and liable, and Company will have no responsibility or liability, for the accuracy of data uploaded to the System by Customer, including without limitation Customer Data and any other data uploaded by Users.

4.6. <u>Data Deletion</u>. For up to ninety (90) days after the date a Customer's account is terminated, so long as Customer is in good standing, Company will, upon written request by Customer or a Customer User, use commercially reasonable efforts to provide Customer and/or Customer User with a copy of its Customer Data in a format supported by the System. After such period as specified in this section, Company may permanently erase Customer Data and Customer acknowledges and agrees that no Company Party will have any liability for such deletion.

4.7. <u>Excluded Data</u>. Customer represents and warrants that Customer Data does not and will not include, and Customer 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**"). CUSTOMER RECOGNIZES AND AGREES THAT: (a) VENDOR HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) VENDOR'S SYSTEMS ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.

4.8. <u>Aggregate & De-Identified Data</u>. 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 Customer or other customers of Company. "**Aggregate Data**" refers to summaries of Customer Data, or of data that includes Customer 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 Customer or any of its Users. "**De**-**Identified**

Data" refers to Customer Data that has been de-identified such that the names and addresses and any other personally identifiable information of Customer and any of its Users has been removed.

5. **CUSTOMER'S RESPONSIBILITIES & RESTRICTIONS.**

5.1. <u>Acceptable Use</u>.

(a) <u>Prohibited Uses</u>. 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) <u>Content Standards</u>. 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) <u>Monitoring and Enforcement</u>. Company, in its sole discretion, will determine whether your conduct is in compliance with this the acceptable use guidelines described in this Agreement. 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 this Agreement, 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 this Agreement.

5.2. <u>Unauthorized Access</u>. Customer shall take reasonable steps to prevent unauthorized access to the System, including without limitation by protecting its passwords and other log-in information. Customer 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. <u>Compliance with Laws</u>. In its use of the System, Customer 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 Customer Data.

5.4. <u>Customer User & Other Users; System Access</u>. Customer is responsible and liable for: (a) Customer Users' and other Users' use of the System, including without limitation unauthorized User conduct and any User conduct that would violate the acceptable use restrictions or the requirements of this Agreement applicable to Customer; and (b) any use of the System through Customer's account, whether authorized or unauthorized.

6. **IP & FEEDBACK.**

6.1. <u>IP Rights in the System</u>. Each Company Party 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. This Agreement does not grant Customer any intellectual property license or rights in or to the System or any of its components, except to the limited extent that this Agreement specifically sets forth Customer license rights to Documentation. Customer recognizes that the System and its components are protected by copyright and other laws.

6.2. <u>Feedback</u>. Company has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that Customer, Customer Users, or other Users provide to Company, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Company's right to use, profit from,

disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer, Customer User or other User in question. Customer hereby grants Company a non-exclusive, royalty-free, worldwide, perpetual, irrevocable, fully-paid up right and license, with the right to sublicense, to exploit Feedback in any and every way. Notwithstanding any contrary provision of Article 7 below (*Confidential Information*), Feedback will not constitute Customer's Confidential Information. "**Feedback**" means any suggestion or idea for improving or otherwise modifying any of Company's products or services.

7. CONFIDENTIAL INFORMATION. From time to time during the Term, either party may disclose or make available (the "**Disclosing Party**") to the other party (the "**Receiving Party**") data, information or materials that are marked, designated or otherwise identified as "confidential" or "proprietary" or that would reasonably be deemed confidential or proprietary based on the nature or contents thereof and/or the circumstances of disclosure, including without limitation, as applicable, information about its 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" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the Receiving Party at the time of disclosure; (c) rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (d) independently developed by the Receiving Party.

7.1. <u>Nondisclosure</u>. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Receiving Party making the disclosure pursuant to the order shall first have given written notice to the Disclosing Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Disclosing Party's rights under this Agreement, including to make required court filings. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the Receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7.2. <u>Injunction</u>. Each party agrees that breach of this Article 7 would cause the other party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, each party will be entitled to

seek injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

7.3. <u>Termination & Return</u>. On the expiration or termination of the Agreement, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Notwithstanding the foregoing, the Receiving Party may retain copies of Confidential Information that are stored on the Receiving Party's IT backup and disaster recovery systems until the ordinary course deletion thereof. The Receiving Party shall continue to be bound by the terms and conditions of this Article 7 with respect to such retained Confidential Information.

7.4. <u>Retention of Rights</u>. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The Receiving Party will retain all right, title, and interest in and to all of its Confidential Information.

7.5. <u>Exception & Immunity</u>. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b) (the "**DTSA**"), Customer is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:

(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. <u>REPRESENTATIONS & WARRANTIES.</u>

8.1. <u>From Company</u>. Company represents and warrants that (a) the System will be provided to Customer substantially in accordance with the specifications and descriptions described in the applicable Documentation during the Term of this Agreement and (b) it is the owner of the System and of each and every component thereof, or the recipient of a valid license thereto, and that it has the full power and authority to grant the rights to use the System set forth in this Agreement without the further consent of any third party. Company's representations and warranties in the preceding sentence do not apply to use of the System in combination with hardware

or software not provided by Company. In the event of a breach of a warranty in this Section 8.1, Company, at its own expense, will promptly take the following actions: (i) replace or modify the System to make it perform substantially in accordance with such specification sand descriptions and/or noninfringing, as applicable; (ii) with respect to a breach of the warranty under Section 8.1(b), secure for Customer the right to continue using the System without infringement; or (iii) terminate the infringing and/or non-conforming features, functionality or components of the System and refund to Customer any prepaid fees for such features, functionality or components, in proportion to the portion of the Term left after such termination. In conjunction with Customer's rights under the SLA, if any, and right to terminate for breach where applicable, the preceding sentence states Company's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Section 8.1 and for potential or actual intellectual property infringement by, and any performance issues with respect to, the System.

8.2. <u>From Customer</u>.

(a) *Re Customer Itself*. Customer represents and warrants that: (i) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement 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 this Agreement; (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, or another entity authorized to do business pursuant to applicable law.

(b) *Re Customer Users*. Customer represents and warrants that, to the best of its knowledge: (i) each Customer User will have the full right and authority to enter into, execute, and perform its obligations as required under this Agreement and the End User Terms of Use, with no pending or threatened claim or litigation that would have a material adverse impact on its ability so to perform; (ii) Customer will accurately identify each Customer User and will not provide any inaccurate information about a Customer User or other User to or through the System; and (iii) each Customer User will be a corporation, state or local governmental entity or subdivision thereof, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business and enter into contracts pursuant to applicable law.

8.3. <u>Warranty Disclaimers</u>. Except to the extent set forth in the SLA, if any, and in Section 8.1 above, CUSTOMER 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) VENDOR HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (c) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

9. **RESERVED.**

10. **LIMITATION OF LIABILITY.**

10.1. IN NO EVENT WILL VENDOR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT 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 CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL VENDOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO VENDOR UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

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 10 apply likewise to Company's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

11. **TERM & TERMINATION.**

11.1. Term. The term of this Agreement shall commence on the Effective Date and, unless earlier terminated pursuant to this Article 11, continue for the period set forth in the Order or, if none, for twelve (12) months (the "**Initial Term**"). Thereafter, the Term may be renewed for successive twelve (12) month periods (each, a "**Renewal Term**", and, collectively with the Initial Term, the "**Term**"), upon agreement of the parties.

11.2. <u>Termination for Cause</u>.

(a) <u>Generally.</u> Either party may terminate this Agreement for the other's material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure. Without limiting Company's other rights and remedies, Company may suspend or terminate a Customer User's or other User's access to the System at any time, without advanced notice, if Company reasonably concludes such Customer User or other User has conducted itself in a way that is not consistent with the requirements of Section 5 or the other requirements of this Agreement or in a way that subjects Company to potential liability.

(b) <u>For Insolvency</u>. Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (a) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (b) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (c) makes or seeks to make a general assignment for the benefit of its creditors; or (d) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

11.3. <u>Termination For Convenience</u>. Customer may terminate this Agreement without cause upon 90 days prior written notice to the Company.

11.4. <u>Effects of Termination</u>. Upon expiration or earlier termination of this Agreement, Customer 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 Customer to pay fees incurred before termination; (b) Articles and Sections 4.6 (Data Deletion), 4.7 (Excluded Data), 4.8 (Aggregate & De-Identified Data), 5.4 (Customer User & Other Users; System Access), 6 (*IP & Feedback*), 7 (*Confidential Information*), 8.3 (*Warranty Disclaimers*), and 10 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

12. <u>MISCELLANEOUS.</u>

12.1. <u>Independent Contractors</u>. The parties are independent contractors and will so represent themselves in all regards. Nothing in this Agreement 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.

12.2. <u>Notices</u>. Except as otherwise set forth herein, all notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the parties address as set forth on the Order or to such other address of which a party provides notice to the other party and delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid). . In addition, Company may provide any such notices under this Agreement to you by email to the address as set forth on the Order (or to such other address of which you provide notice to Company). You hereby acknowledge and agree that all agreements, notices, disclosures, and other communications that we provide to you electronically as permitted under this Agreement satisfy any legal requirement that such communications be in writing. Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section.

12.3. <u>Force Majeure</u>. In no event shall either party be liable to the other party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such party'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.

12.4. <u>Assignment & Successors</u>. Customer may not assign this Agreement or any of its rights or obligations hereunder without Company's express written consent. Any purported assignment, transfer, or delegation in violation of this Section is null and void. No assignment, transfer, or delegation will relieve the assigning or delegating party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted 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.

12.5. <u>Severability</u>. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement 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 this Agreement will continue in full force and effect.

12.6. <u>No Waiver</u>. Neither party will be deemed to have waived any of its rights under this Agreement 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 this Agreement will constitute a waiver of any other breach of this Agreement.

12.7. <u>Choice of Law</u>: This Agreement 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.

12.8. <u>Conflicts</u>. Except as explicitly stated elsewhere in the Agreement, in the event of a conflict or inconsistency between the provisions of the components of the Agreement, then the following order of precedence shall apply: (a) the Order's terms and conditions shall take precedence over any other component of the Agreement; (b) then the Additional Terms; and (c) then these Terms of Service.

12.9. <u>Construction</u>. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

12.10. <u>Technology Export</u>. Customer 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, Customer 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).

12.11. <u>Reserved.</u>

12.12. <u>Amendment</u>. Company may amend these Terms of Service from time to time by posting an amended version on the Site and such modified Terms of Services shall apply as described in the introductory language to these Terms of Service. These Terms of Service 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.