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NGEN TERMS OF SERVICE

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING "ACCEPTED AND AGREED TO," USER AGREES TO THESE TERMS AND CONDITIONS.

These Terms of Service constitute an agreement (these "Terms of Service") by and between Inclusive Consulting Services, LLC, a Connecticut limited liability company whose principal place of business is 845 Brook Street, Rocky Hill, Connecticut 06067 ("Vendor") and the corporation, LLC, partnership, sole proprietorship, or other business entity indicating acceptance to these Terms of Service ("User"). These Terms of Service are effective as of the date User clicks "Accepted and Agreed To" (the "Effective Date"). User's use of and Vendor's provision of Vendor's System (as defined below) are governed by these Terms of Service.

These terms apply to User's use of the System (as defined below) provided by Vendor only if the System is operated and administered for the User by a customer of Vendor that has subscribed to access the System and to grant User's access to the System (the "Administrator").

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THESE TERMS OF SERVICE, UNDERSTANDS THEM, AND AGREES TO BE BOUND BY THEIR TERMS, AND THAT THE PERSON ACCEPTING THESE TERMS OF SERVICE ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON ACCEPTING THESE TERMS OF SERVICE ON USER'S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND USER TO THESE TERMS OF SERVICE.

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

1.1. "AUP" means Vendor's acceptable use policy currently posted at www.inclusiveprosperitycapital.org/ngenlegal.

1.2. "Privacy Policy" means Vendor's privacy policy, currently posted at www.inclusiveprosperitycapital.org/ngenlegal.

1.3. "System" means Vendor's workflow management and data reporting computer system platform 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.

1.4. "User Data" means data in electronic form input or collected through the System by or from User.

1.5. "Vendor Party" means, collectively, Vendor and its affiliates and licensors.

2. USE OF THE SYSTEM. User may access and use the System pursuant to the terms and conditions hereof for so long as User has a valid right to use the System as a User or for so long as the Administrator has validly granted to the User the right to use the System, whichever is shorter. Without prejudice to any other rights, Vendor may terminate User's right to access and use the System if (a) either User or the Administrator fail to comply with these Terms of Service, the Privacy Policy or the AUP; or (b) Vendor determines in its sole discretion that it is not in Vendor's best interest to continue to provide the User with access and use of the System.

3.ADMINISTRATOR. Vendor will interact with the Administrator that operates and manages User's access to the System. An Administrator is not an agent of Vendor and is not authorized to many any representations or warranties on behalf of Vendor regarding the System or its use. User expressly acknowledges and agrees that Vendor 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 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 Vendor'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. Vendor 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 Service, 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. Vendor 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 delinquent, suspended, or terminated, Vendor 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, Vendor may permanently erase User Data and User acknowledges and agrees that no Vendor 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 Vendor'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) 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.

4.6. Aggregate & De-Identified Data. Notwithstanding the provisions above of this Article 4, Vendor may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data and De-Identified Data in any way, in its sole discretion. "Aggregate Data" refers to summaries of User Data, or of data that includes User Data, that do not include personally identifiable information or the names or addresses of User. "De-Identified Data" refers to User Data with the following removed: personally identifiable information and the name and addresses of User.

5. USER'S RESPONSIBILITIES & RESTRICTIONS.

5.1. Acceptable Use. User shall comply with the AUP. 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, 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 5.1, including without limitation by Users, Vendor may suspend User's access to the System without advanced notice, in addition to such other remedies as Vendor may have. Neither these Terms of Service nor the AUP requires that Vendor take any action against User or other third party for violating the AUP, this Section 5.1, or these Terms of Service, but Vendor is free to take any such action it sees fit.

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 Vendor 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. Vendor 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 Service 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. <u>Feedback</u>. Vendor has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that User or other users provide to Vendor, and nothing in these Terms of Service or in the parties' dealings arising out of or related to these Terms of Service will restrict Vendor'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. ("<u>Feedback</u>" refers to any suggestion or idea for improving or otherwise modifying any of Vendor's products or services.)

7. CONFIDENTIAL INFORMATION. "<u>Confidential Information</u>" refers to any information about Vendor'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" Vendor discloses to User any nonpublic, sensitive information User should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in User's possession at the time of disclosure; (ii) is independently developed by User without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of User's improper action or inaction; or (iv) is approved for release in writing by Vendor.

7.1. <u>Nondisclosure</u>. User shall not use Confidential Information for any purpose other than as necessary for its use of the System (the "<u>Purpose</u>"). 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 Vendor'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 Vendor 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 Vendor prompt notice of any such legal or governmental demand and reasonably cooperate with Vendor in any effort to seek a protective order or otherwise to contest such required disclosure, at Vendor's expense.

7.2. <u>Injunction</u>. User agrees that breach of this Article 7 would cause Vendor irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Vendor will be entitled to 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>. 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 Vendor'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 Service, User shall return all copies of Confidential Information to Vendor or certify, in writing, the destruction thereof.

7.4. <u>Retention of Rights</u>. These Terms of Service does not transfer ownership of Confidential Information or grant a license thereto. Vendor will retain all right, title, and interest in and to all Confidential Information.

7.5. <u>Exception & Immunity</u>. 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 Service:

(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.

8.1. <u>User Representations and Warranties</u>. 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 Service 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 Service; (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. <u>No Vendor Warranties</u>. 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. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) VENDOR HAS NO OBLIGATION TO

INDEMNIFY OR DEFEND USER 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 USER DATA WILL REMAIN PRIVATE OR SECURE.

9. INDEMNIFICATION. User shall defend, indemnify, and hold harmless each Vendor Party and their respective officers, directors, shareholders, members, partners, affiliates, subsidiaries, agents, successors, and assigns (collectively "Vendor 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 Vendor'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. Vendor 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 VENDOR BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS OF SERVICE 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 VENDOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OF SERVICE 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, Vendor's liability

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

11. MISCELLANEOUS.

11.1. <u>Independent Contractors</u>. The parties are independent contractors and will so represent themselves in all regards. Nothing in these Terms of Service 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.

11.2. <u>Assignment & Successors</u>. User may not assign these Terms of Service or any of its rights or obligations hereunder without Vendor's express written consent. Except to the extent forbidden in this Section 11.2, these Terms of Service will be binding upon and inure to the benefit of the parties' respective successors and assigns. Except for Section 9 as it applies to Vendor 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.

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

11.4. <u>No Waiver</u>. Neither party will be deemed to have waived any of its rights under these Terms of Service 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 Service will constitute a waiver of any other breach of these Terms of Service.

11.5. <u>Choice of Law & Jurisdiction</u>. These Terms of Service will be governed solely by the internal laws of the State of Connecticut, 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 Service 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.

11.6. <u>Conflicts</u>. In the event of any conflict between these Terms of Service and any Vendor policy posted online, including without limitation the AUP or Privacy Policy, the terms of these

Terms of Service will govern.

11.7. <u>Construction</u>. The parties agree that the terms of these Terms of Service result from negotiations between them. These Terms of Service will not be construed in favor of or against either party by reason of authorship.

11.8. <u>Technology Export</u>. 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 Vendor 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).

11.9. <u>Entire Agreement</u>. These Terms of Service 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.

11.10. <u>Amendment</u>. Vendor may amend these Terms of Service from time to time by posting an amended version at its Website. User's continued use of the System following the effective date of an amendment will confirm User's consent thereto. 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, Vendor may revise the Privacy Policy or AUP at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted.