



Esusu, Inc.
200 Broadway, 3rd Floor, Suite 209
New York, NY 10038

ORDER FORM for: Lindy Communities
Offer Valid Through: December 1, 2024
Sent By: Marcel Garon
Email: marcel@esusu.org
Order Form #: [Lindy 001]

ORDER FORM

Client Address Information Contact Info: Lindy Communities (“ Client ”) 309 York Road Suite 211 Jenkintown, PA 19046 Client Contact: Jim Dietrich Email: jdietrich@comehometolindy.com Phone: 215-886-8030 ext. 13	Billing Info: Lindy Communities 309 York Road Suite 211 Jenkintown, PA 19046 Billing Contact: Tina Watson Billing Email: ap@comehometolindy.com Billing Phone: 215-886-8030
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Terms & Conditions Effective Date: December 1, 2024 Initial Term: 24 months	Billing Frequency: Annual Billing Method: Invoice Payment Terms: Net-15 Payment Method: ACH
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If additional Order Forms are executed during the Term to add or change Services, Properties or Additional Data Recipients, duration of the Term shall not change.

Services

Services	Standard Unit Price	Client Unit Price	Order Term (Months):	# of Units*	Total
Rent Reporting Services:					
• Annual Platform Fee**	\$3,500	\$3,500.00	N/A	N/A	\$7,000.00
• Monthly Rent Reporting Services / Unit	\$2.00	\$0.00	24	3,823	\$0.00
• Monthly Rent Reporting Services / Unit**	\$2.00	\$1.50	24	2,363	\$85,068.00
• One-Time Virtual Inspection Fee	\$250	\$0.00	N/A	N/A	\$0.00
Premium Services:					
• Additional (>10) Client Dashboard Seats	\$500				
• Other Premium Services	N/A				
				Subtotal:	\$92,068.00
				LESS Total Price Payable by Third Party:**	\$92,068.00
				Total Price Payable by Client.***	\$0.00

* Rent Reporting Monthly Servicing Fees are charged on the total number of Units eligible for the Services, regardless of resident participation.
** Identified fees are paid in full by a third party GSE on Client’s behalf during the Initial Term.
*** Total Price is exclusive of taxes. All applicable taxes are the responsibility of Client. This is not an invoice.

Properties To Receive to Rent Reporting Services:

(See Annex I)

Additional Data Recipients:

N/A

Special Terms:

The Parties agree to remove the following provision from Section 6.1 of the MSA:

"Without limiting the foregoing, Client hereby grants Esusu the right to use Client's Brand Elements in marketing, sales, and public relations materials and other communications solely to identify Client as a customer of Esusu's; provided that Client shall have the right to revoke permission of such use at any time, upon reasonable prior notice to Esusu."

Notwithstanding Section 8 of the MSA, this Order Form is not subject to automatic renewal.

The Parties agree that Section 9.2 of the MSA shall be revised as follows:

"9.2 EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3 OR 9.4, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED \$500,000.00"

The Parties agree that Section 10.1 of the MSA shall be revised as follows:

"10.1 Each Party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the other Party and its respective officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, (collectively, "Losses"), arising out of or relating to any claim, suit, action, or proceeding of a third-party (each, an "Action") arising out of or resulting from the other Party's actual or alleged (a) negligence or willful misconduct, (b) breach of any representation, warranty, or obligation set forth in this Agreement, (c) infringement of any United States patent or any copyright or misappropriation of any trade secret, or (d) violation of Applicable Law."

The Parties agree that Section 12 of the MSA shall be revised as follows:

"...Notwithstanding the foregoing, Client agrees to receive communications (other than legal notices) from Esusu electronically in connection with the Services. Such communications may be delivered via email to the Client Representative or by posting notices or delivering notifications through Esusu's web portals, mobile applications or other electronic means."

The Parties agree that Section 14 of the MSA shall be amended and restated as follows:

Except as set forth below, no amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by each Party. Notwithstanding the foregoing, Esusu may amend or modify this Agreement or any Addendum from time to time with reasonable notice to but without the consent of Client (a) if Esusu reasonably determines that such amendment or modification is necessary or advisable to comply with Applicable Law, or (b) if such amendment or modification does not have an adverse effect on Client's rights under this Agreement. Esusu may notify Client of any such amendment or modification through electronic communications as contemplated by Section 12 or by posting the updated terms of the Agreement, including the applicable effective date thereof.

Section 20 of the MSA is hereby amended and restated as follows:

"This Agreement and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, United States of America, without giving effect to the conflict of laws provisions thereof to the extent they would require or permit the application of the laws of any other jurisdiction. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising out of or relating to this Agreement, including contract, equity, tort, fraud, and statutory claims, in any forum other than the U.S. District Court for the Eastern District of Pennsylvania or, if such court does not have subject matter jurisdiction, the courts of the Commonwealth of Pennsylvania sitting in Montgomery County, Pennsylvania, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law."

This Order Form is governed by the terms and conditions of the attached Master Services Agreement, including the Addendum(s) set forth therein or provided herewith that are applicable to the Services

subscribed to above (the “**MSA**”), except as otherwise expressly provided in Special Terms above. Capitalized terms used herein shall have the meaning given in the MSA or such Addendum(s). Upon signature by Customer and submission to Esusu, this Order Form shall become legally binding unless this Order Form is rejected by Esusu for any of the following reasons: (1) the signatory below does not have the authority to bind Client to this Order Form, (2) changes have been made to this Order Form (other than completion of the requested Client information and the signature block), or (3) the requested Client information or signature is incomplete or does not match our records or the rest of this Order Form.

By its signature below, effective as of the Effective Date, each Party acknowledges it has read and understands the MSA and applicable Addendum(s) and has executed this Order Form by its duly authorized representative(s).

Lindy Communities

By DocuSigned by:
Brian Kroker
619F136104DA403...

Name: Brian Kroker

Title: Chief Operating Officer

ESUSU, INC.

By DocuSigned by:
Wemimo Abbey
A49774949332465...

Name: Wemimo Abbey
Title: co-Chief Executive Officer

By DocuSigned by:
Samir Goel
A73B851B130F47D...

Name: Samir Goel
Title: co-Chief Executive Officer

Annex I

Properties To Receive Rent Reporting Services

Name ▼	Address ▼	Units ▼	Agency Loan? ▼	Loan # (if Agency) ▼
Towers at Wyncote	8440 Limekiln Pike, Wyncote, PA, 19095	1,095	X	018612
Meadowbrook Apartments	200 Meadowbrook Dr, Huntingdon Valley, PA 19006	531	X	019037
Joshua House	2607 Welsh Rd, Philadelphia, PA 19114	312	X	018856
450 Green Apartments	450 Forrest Ave, Norristown, PA 19401	305	X	018855
Longwood Manor	2401 Hoffnagle St, Philadelphia, PA 19152	120	X	10201953
Agency Total		2,363		
251 Dekalb	251 W Dekalb Pike, King Of Prussia, PA 19406	628		
Gateway Towers	3600 Gateway Dr, Philadelphia, PA 19145	399		
Park at Westminster	600 Valley Rd, Warrington, PA 18976	270		
Warrington Crossings	1700 Street Rd, Warrington, PA 18976	229		
YONO Apartments	1320 W Somerville Ave, Philadelphia, PA 19141	225		
York House	5325 Old York Rd, Philadelphia, PA 19141	217		
Gateway Enclave	3900 Gateway Dr, Philadelphia, PA 19145	216		
Bromley House	6901-6907 Old York Rd, Philadelphia, PA 19126	210		
7400 Roosevelt	7400 Roosevelt Blvd, Philadelphia, PA 19152	196		
Haverford Court Apartments	7400 Haverford Ave, Philadelphia, PA 19151	158		
Crossings at Stanbridge	38 Jenkins Ave, Lansdale, PA 19446	150		
Fountain Gardens	2901 Welsh Rd, Philadelphia, PA 19152	117		
Academia Suites	1100 W Godfrey St, Philadelphia, PA 19141	112		
Mt. Airy Place	1651-1651 E Mt Airy Ave, Philadelphia, PA 19150	100		
Regency House	6301-6341 N 10th St, Philadelphia, PA 19141	93		
Rosedale Apartments	2223 Florey Ln, Roslyn, PA 19001	77		
Sedgwick Gardens	440 W Sedgwick St, Philadelphia, PA 19119	68		
Willow Bend	944 E Johnson St, Philadelphia, PA 19138	66		
Gardens of Mt. Airy	1133 E Mt. Airy Ave, Philadelphia, PA 19150	61		
Gateway Airport Townhomes	8209 Buist Avenue, Philadelphia, PA 19153	52		
West Gate Arms	1521 W Main St, Jeffersonville, PA 19403	49		
Eola Park	6344 N 8th St, Philadelphia, PA 19141	43		
Overlook Hills Apartments	1569 Edgehill Road, Abington, PA 19001	38		
Elkins Park Terrace	22 Township Line Rd, Elkins Park, PA 19027	31		
Sedgwick Terrace	540 W Sedgwick St, Philadelphia, PA 19119	18		
Non-Agency Total		3,823		
Subtotal		6,186		

Master Services Agreement

This Master Services Agreement (this “**MSA**”), is between **ESUSU, INC.** a Delaware corporation, with offices located at 200 Broadway, 3rd Floor, Suite 209, New York, NY 10038 (“**Esusu**”) and any customer signing an Order (as defined below) that incorporates the terms of this MSA by reference (“**Client**” and together with Esusu, the “**Parties**”, and each a “**Party**”). The “**Effective Date**” of this MSA is the date on which Client and Esusu first execute an Order.

WHEREAS Esusu has the capability and capacity to provide certain financial technology services and other services; and

WHEREAS Client desires to retain Esusu to provide the said services, and Esusu is willing to perform such services under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Esusu and Client agree as follows:

1. **Services.** Esusu shall provide to Client the services (the “**Services**”) subscribed to in one or more order forms entered into between Client and Esusu (each, an “**Order**”). The addendums linked to the left and/or attached hereto (each, an “**Addendum**”) provide additional terms applicable to the use of, and access to, the applicable Services. Any such applicable Addendum is hereby incorporated into the terms of this MSA. Additional Orders or amendments or other modifications thereto shall be deemed issued and accepted only if signed by the authorized signatories of Esusu and Client. This MSA, including and together with any related Orders, applicable Addendums, exhibits, schedules, attachments, and appendices, shall be referred to herein collectively as the “**Agreement**”.

2. **Esusu Obligations.** Esusu shall:

2.1 Designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the “**Esusu Representative**”) with such designation to remain in force unless and until a successor Esusu Representative is appointed.

2.2 Maintain complete and accurate records relating to the provision of the Services under this Agreement.

3. **Client Obligations.** Client shall:

3.1 Designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the “**Client Representative**”), with such designation to remain in force unless and until a successor Client Representative is appointed.

3.2 Require that the Client Representative respond promptly to any requests from Esusu for instructions, information, data, or approvals reasonably required by Esusu to provide the Services.

3.3 Cooperate with Esusu in its performance of the Services and provide access to Client's employees, contractors, data and systems as reasonably required by Esusu to provide the Services

3.4 Take all steps reasonably necessary, including obtaining any required licenses or consents, to prevent Client-caused delays in Esusu's provision of the Services.

3.5 Not use the Services (a) for any purpose not authorized under this Agreement, or (b) to: (i) copy, modify, or create derivative works of the Services, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services; or (v) use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any Applicable Law.

4. Fees and Expenses.

4.1 In consideration of the provision of the Services by Esusu and the rights granted to Client under this Agreement, Client shall pay the fees and other charges set out in each applicable Order ("**Fees**"). Unless otherwise provided in the applicable Order, said Fees shall be payable within 30 days after receipt by the Client of an invoice from Esusu. Client may withhold from payment any and all payments of Fees that Customer disputes in good faith, pending resolution of such dispute, provided that Customer: (i) timely renders all payments and amounts that are not in dispute; (ii) notifies Provider of the dispute at **billing@esusu.org** prior to the due date for payment, specifying in such notice the amount in dispute and the reason for the dispute; (iii) works with Provider in good faith to promptly resolve the dispute; and (iv) promptly pays any amount determined to be payable by resolution of the dispute.

4.2 Client shall reimburse Esusu for all reasonable and pre-approved expenses incurred in accordance with the Order, within 30 days after receipt by the Client of an invoice from Esusu accompanied by (if requested by Client) receipts and reasonable supporting documentation.

4.3 Client shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Client hereunder; and to the extent Esusu is required to pay any such sales, use, excise, or other taxes or other duties or charges, Client shall reimburse Esusu in connection with its payment of fees and expenses as set forth in this Section 4. Notwithstanding the previous sentence, in no event shall Client pay or be responsible for any taxes imposed on, or regarding, Esusu's income, revenues, gross receipts, personnel, or real or personal property or other assets.

4.4 All late payments shall bear interest at the lesser of (a) the rate of 1.5% per month and (b) the highest rate permissible under Applicable Law, calculated daily and compounded monthly. Client shall also reimburse Esusu for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. As used herein, "**Applicable Law**" means, with respect to each Party, all federal, state, and local laws, ordinances, regulations, and orders that are applicable to such Party and the operation of such Party's business and to this Agreement and any related Orders and such Party's performance hereunder and thereunder, including, as and to the extent applicable, (a) The Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq., (b) the Consumer Financial Protection Act of 2010 ("CFPA"), 12 U.S.C. § 5301 et seq., and (c) the California Consumer

Privacy Act of 2018, as amended by the California Privacy Rights Act of 2020 (collectively, "CCPA").

4.5 In addition to all other remedies available under this Agreement or at law (which Esusu does not waive by the exercise of any rights hereunder), Esusu shall be entitled to suspend the provision of any Services if the Client fails to pay to Esusu any undisputed amounts when due and such failure continues for 10 business days following written notice thereof.

5. Limited Warranty and Limitation of Liability.

5.1 Esusu warrants that it shall perform the Services:

- (a) In accordance with the terms and subject to the conditions set forth in this Agreement.
- (b) Using personnel of required skill, experience, and qualifications.
- (c) In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.

5.2 Esusu's sole and exclusive liability and Client's sole and exclusive remedy for breach of this warranty shall be as follows:

- (a) Esusu shall use commercially reasonable efforts to promptly cure any such breach; provided, that if Esusu cannot cure such breach within a reasonable time (but no more than 30 days) after Client's written notice of such breach, Client may, at its option, terminate the Agreement by serving written notice of termination in accordance with 8.2.
- (b) In the event the Agreement is terminated pursuant to 5.2(a) above, Esusu shall within 30 days after the effective date of termination, refund to Client any Fees paid by the Client as of the date of termination for the Service or Deliverables (as defined in 6 below), less a deduction equal to the Fees for receipt or use of such Deliverables or Service up to and including the date of termination on a prorated basis.
- (c) The foregoing remedy shall not be available unless Client provides written notice of such breach within 30 days after delivery of such Service or Deliverable to Client.

5.3 ~~EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED IN 5.1, ABOVE, THE SERVICES ARE PROVIDED "AS IS," AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED.~~

6. Intellectual Property.

6.1 Each Party hereby grants the other Party the right to use such Party's name, primary trademark and logo ("**Brand Elements**") as reasonably necessary or required for the other Party to perform its respective obligations under the Agreement. Each Party shall

Commented [JP1]: We cannot accept this deletion. It is customary to exclude implied warranties. What is the specific concern?

obtain the other Party's prior written approval of all materials using the Brand Elements. Neither Party shall depict the Brand Elements of the other Party in any manner or in any materials that would tend to denigrate, disparage, tarnish, present in a false light, or otherwise reflect negatively on the other Party, or any of the other Party's products or services. Other than as expressly stated herein, neither Esusu nor Client shall use the other Party's Brand Elements without the prior written permission of the other Party.

Commented [JP2]: Accepted.

6.2 All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that are delivered to Client under this Agreement or prepared by or on behalf of Esusu in the course of performing the Services, including any items identified as such in the Order (collectively, the "**Deliverables**"), except for any Confidential Information of Client or client materials, shall be owned by Esusu. Esusu hereby grants Client a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Client to make reasonable use of the Deliverables and the Services.

7. Confidentiality; Data Security.

7.1 From time to time during the Term of this Agreement, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**"), non-public, proprietary, and confidential information of Disclosing Party that is labeled or identified as "confidential," or which should reasonably be understood as confidential given the nature of the information and the circumstances of its disclosure ("**Confidential Information**"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party's breach of this 7; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source that, to the Receiving Party's knowledge, was not legally or contractually restricted from disclosing such information; (c) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; or (d) the Receiving Party establishes by documentary evidence, was or is independently developed by Receiving Party without using any of the Disclosing Party's Confidential Information.

7.2 The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information of like importance, but in no event with less than a reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person or entity, except (i) as contemplated by this Agreement in order to exercise its rights or perform its obligations hereunder, and (ii) to the Receiving Party's Group who need to know the Confidential Information to assist the

Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. For purposes of this 7 only, "**Receiving Party's Group**" shall mean the Receiving Party's corporate affiliates and its or their employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, service providers, attorneys, accountants, and financial advisors. In any event, the Receiving Party shall be responsible for any violation of this Section 7 caused by any member of the Receiving Party's Group.

7.3 If the Receiving Party is required by Applicable Law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. In any event, upon the Disclosing Party's request, the Receiving Party shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

7.4 Without limiting the foregoing, to the extent that Esusu is provided with access to the Personal Information of Client's employees, customers or users in order to provide the Services, Esusu shall process such personal information in accordance with Esusu's Data Processing Addendum (the "**DPA**"). As used herein, "**Personal Information**" shall have the meaning set forth in the DPA.

7.5 Each Party shall be responsible for maintaining the confidentiality of any log-in credentials provided or created for it by the other Party to access an account created under this Agreement. In the event a Party shares log-in credentials with another person, such Party acknowledges and accepts full responsibility for any acts taken concerning the Services by the party to whom such Party provided the log-in credentials. Each Party agrees to promptly notify the other Party of any unauthorized use of log-in credentials or other breach of security.

8. Term, Termination, and Survival.

8.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Orders unless sooner terminated pursuant to 8.2 or 8.3. Unless otherwise specified in an Order, upon conclusion of the "**Initial Term**" set forth therein, such Order shall not automatically renew.

8.2 Either Party may terminate this Agreement, effective upon written notice to the other Party (the "**Defaulting Party**") if the Defaulting Party (a) materially breaches this Agreement, and the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach, or such material breach is incapable of cure; (b) becomes insolvent or admits its inability to pay its debts generally as they become due; (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven days or is not dismissed

or vacated within 45 days after filing; (d) is dissolved or liquidated or takes any corporate action for such purpose; (e) makes a general assignment for the benefit of creditors; or (f) has 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.

8.3 Esusu may also terminate this Agreement and any Orders before the end of the Term upon written notice if Client fails to pay any amount when due hereunder: (a) and such failure continues for 10 business days after Client's receipt of written notice of nonpayment; or (b) more than three times in any six-month period.

8.4 The rights and obligations of the Parties set forth in this 8.4 and in Sections 7.1 through 7.3, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement. Records relating to the Services provided hereunder shall be kept in accordance with generally accepted principles of due diligence and may be retained by Esusu following the transaction as long as necessary for the purpose of audit and compliance with Applicable Law. Data furnished to the national consumer reporting agencies shall be retained and remain property of such agencies. Client agrees to reply to queries by or on behalf of Esusu with respect to furnished data, during and after termination of this Agreement.

9. Limitation of Liability.

9.1 EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3 OR 9.4, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

9.2 EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3 OR 9.4, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED \$500,000.00.

9.3 NOTWITHSTANDING THE FOREGOING, THE EXCLUSIONS AND LIMITATIONS SET FORTH IN SECTIONS 9.1 AND 9.2 SHALL NOT APPLY TO A PARTY'S (A) RESPECTIVE PAYMENT OBLIGATIONS, (B) WILLFUL MISCONDUCT OR INTENTIONAL WRONGFUL ACTS, (C) GROSSLY NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS THAT RESULT IN DEATH OR BODILY INJURY OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, (D) RESPECTIVE INDEMNIFICATION OBLIGATIONS UNDER SECTION 10, OR (E) FAILURE TO COMPLY WITH SECTIONS 7.1 THROUGH 7.3 (CONFIDENTIALITY). IN ADDITION, SUCH EXCLUSIONS AND IMITATIONS SHALL NOT APPLY TO ESUSU'S FAILURE TO COMPLY WITH SECTION 7.4 (DATA SECURITY), WHICH SHALL BE SUBJECT TO SECTION 9.4.

9.4 IN NO EVENT WILL THE LIABILITY OF ESUSU ARISING OUT OF OR RELATED TO

Commented [JP3]: As indicated earlier, we are not able to offer month-to-month contracts. The minimum initial term we offer is one year.

Commented [JP4]: Language re-inserted. It is not acceptable to strike the entire Limitation of Liability provision. This is a standard term in every services agreement. If there are specific concerns about the provision as drafted, we are willing to discuss reasonable modifications to address.

| ESUSU'S FAILURE TO COMPLY WITH SECTION 7.4 (DATA SECURITY) UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THREE TIMES THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO ESUSU FOR THE SERVICES IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10. Indemnification.

10.1 Each Party (the “**Indemnifying Party**”) shall indemnify, defend, and hold harmless the other Party and its respective officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, “**Indemnified Party**”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, (collectively, “**Losses**”), arising out of or relating to any claim, suit, action, or proceeding of a third-party (each, an “**Action**”) arising out of or resulting from the other Party's actual or alleged (a) negligence or willful misconduct, (b) breach of any representation, warranty, or obligation set forth in this Agreement, (c) infringement of any United States patent or any copyright or misappropriation of any trade secret, or (d) violation of Applicable Law.

Commented [JP5]: Acceptable pending resolution of other points.

10.2 The Indemnified Party shall promptly notify the Indemnifying Party in writing of any Action and cooperate with the Indemnifying Party at the Indemnifying Party's sole cost and expense. The Indemnifying Party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same at its sole cost and expense. The Indemnified Party's failure to perform any obligations under this Section 10.2 shall not relieve the Indemnifying Party of its obligations under this Section 10.2 except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnified Party may participate in and observe the proceedings at its own cost and expense.

10.3 Notwithstanding anything to the contrary in this Agreement, the Indemnifying Party is not obligated to indemnify, hold harmless, or defend the Indemnified Party against any claim (whether direct or indirect) if such claim or corresponding Losses arise out of or result from, in whole or in part, (a) the Indemnified Party's negligence or more culpable act or omission (including recklessness or willful misconduct), or (b) in the case of Section 10.1(c), portions or components of the Services (i) not supplied by the Indemnifying Party, (ii) made in whole or in part in accordance with the Indemnified Party's specifications, (iii) that are modified after delivery by the Indemnifying Party, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where the Indemnified Party continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where the Indemnified Party's use of the Services is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Esusu to be infringing, Esusu may, at its option and expense (a) replace or modify the Services to be non-infringing (provided that such modification or replacement contains substantially similar features and

functionality), (b) obtain for Client a license to continue using the Services, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Client's rights hereunder and provide a refund of any prepaid, unused fees for the Services.

11. **Entire Agreement.** This Agreement, including and together with any related Orders, applicable Addendums, exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. The Parties acknowledge and agree that if there is any conflict between the terms and conditions of this MSA and any applicable Addendums and the terms and conditions of any related Order, the terms and conditions of this MSA and such Addendums shall supersede and control unless the Order expressly identifies both the provision within this MSA or such Addendum that is being overridden by the Order and the provision within the Order that will prevail. No browse-wrap, shrink-wrap, click-wrap or other non-negotiated terms and conditions that are presented to Esusu by any technology platform or system in connection with its provision of the Services will constitute a part of or amendment to this Agreement or binding on Esusu for any purpose. As between the Parties, all such other terms and conditions shall have no force and effect and are deemed rejected by Esusu, even if access to or use of any technology or system requires affirmative acceptance of such terms and conditions.

12. **Notices.** Unless otherwise provided herein, all legal notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") (a) must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section), and (b) must be delivered by personal delivery (effective when delivered with written confirmation of receipt), nationally recognized overnight courier (effective when received), or certified or registered mail (effective on the third day after the date mailed)).

Notice to Client: As set forth in the applicable Order

Notice to Esusu: Esusu, Inc.
200 Broadway, 3rd Floor, Suite 209
New York, New York 10038
Attention: Legal Team
With a copy to: legalnotices@esusu.org

Notwithstanding the foregoing, Client agrees to receive communications (other than legal notices) from Esusu electronically in connection with the Services. Such communications may be delivered via email to the Client Representative or by posting notices or delivering notifications through Esusu's web portals, mobile applications or other electronic means.

13. **Severability.** If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to reflect the original intent of the Parties as

closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14. Amendments. Except as set forth below, no amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by each Party. Notwithstanding the foregoing, Esusu may amend or modify this Agreement or any Addendum from time to time with reasonable notice to but without the consent of Client (a) if Esusu reasonably determines that such amendment or modification is necessary or advisable to comply with Applicable Law, or (b) if such amendment or modification does not have an adverse effect on Client's rights under this Agreement. Esusu may notify Client of any such amendment or modification through electronic communications as contemplated by Section 12 or by posting the updated terms of the Agreement, including the applicable effective date thereof.

15. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

16. Assignment. Neither Party shall assign, transfer, delegate, or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld, withdrawn, conditioned or delayed; provided, however, that Esusu may, upon written notice to Client, transfer and assign its rights and obligations under this Agreement without consent (a) to any corporate affiliate, or (b) in connection with a merger, acquisition, reorganization, or a sale of all or substantially all of its business or assets to which this Agreement relates. No assignment or delegation shall relieve the assigning Party of any of its obligations under this Agreement. Any purported assignment or delegation in violation of this 16 shall be null and void.

17. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective successors and permitted assigns.

18. Relationship of the Parties. The relationship between the Parties is that of independent contractors. The details of the method and manner for performance of the Services by Esusu shall be under its own control, Client being interested only in the results thereof. Esusu shall be solely responsible for supervising, controlling, and directing the details and manner of the completion of the Services. Nothing in this Agreement shall give the Client the right to instruct, supervise, control, or direct the details and manner of the completion of the Services. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

19. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Commented [JP7]: This clause is required for legal and operational reasons. We require (a) because in the event of a change Applicable Law that requires a change in the Program, all agreements must be conformed to that change. In clause (b) we have deleted the word "material" prior to "adverse effect" to make clear that any such changes would only be for operational reasons which require consistency across the Program.

20. Choice of Law and Forum. This Agreement and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, United States of America, without giving effect to the conflict of laws provisions thereof to the extent they would require or permit the application of the laws of any other jurisdiction. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising out of or relating to this Agreement, including contract, equity, tort, fraud, and statutory claims, in any forum other than the U.S. District Court for the Eastern District of Pennsylvania or, if such court does not have subject matter jurisdiction, the courts of the Commonwealth of Pennsylvania sitting in Montgomery County, Pennsylvania, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

21. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES THAT ANY CONTROVERSY THAT MAY ARISE OUT OF OR RELATE TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

22. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

23. Force Majeure. No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any payment obligations for Services already rendered), when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("**Impacted Party**") reasonable control ("**Force Majeure Event(s)**"), which shall include, but not be limited to: (a) acts of God; (b) floods, fires, earthquakes, epidemics, pandemics or explosions; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency. The Impacted Party shall give notice within 10 business days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 consecutive days following written notice given by it under this Section | 23 |, the other Party may thereafter terminate this Agreement upon 30 days' written notice.

Commented [JP8]: Accepted, thanks for catching.

[Last Revised August 6, 2024]