

TERMS AND CONDITIONS FOR MARKETPLACE PROVIDER AGREEMENT

These Terms and Conditions are part of a Marketplace User Agreement (the “Agreement”) between FormFox and the Provider named on the signature page of the Agreement. Capitalized terms in these Terms and Conditions that are not defined in these Terms and Conditions have the meanings given to them on the signature page of the Agreement.

1.1. Definitions.

- (a) “Abuse” shall be deemed to have occurred if, in Provider’s access and use of the Service (i) Provider builds applications that interact with, or combine applications with, the Service which applications negatively affect the speed and performance of the Service, (ii) Provider create dynamic pages which (a) take longer than 5 seconds to resolve, or (b) take longer than 8 seconds to load, or (iii) Provider reach ten percent (10%) or more of the annual web request subscription allowance set forth in the SOW within a 24-hour period. If Abuse occurs, FormFox shall, in addition to and not exclusive of any other remedies at law or in equity, have the right to audit and require Provider to take immediate corrective actions.
- (b) “Administrative Services” means the operation of the Marketplace and the administrative services provided by FormFox in connection with the Marketplace, including services relating to arranging, scheduling, billing, and paying for Employment Assessment Services, but excluding the actual provision of Employment Assessment Services.
- (c) “Available” means when a User has reasonable access to the system, excluding Emergency Maintenance & Preventative Maintenance windows. Availability does not extend to Third Party Applications.
- (d) “Basic Support” - means the Basic Support provided [here](#).
- (e) “Employment Assessment Services” means services related to the assessment of a person’s fitness for duty or qualification for employment, including (i) laboratory testing, (ii) the sale of point of care or instant testing devices, (iii) services provided by medical review officers, (iv) the collection of urine, blood, oral fluid, hair, fecal matter, and other specimens, (v) physical examinations, and (vi) occupational health services.
- (f) “Law” means any applicable federal, state, or local law, rule, and regulation, as amended.
- (g) “Marketplace” means the electronic marketplace that is owned and operated by FormFox and through which Providers can offer, and employers and third-party administrators can arrange and pay for, Employment Assessment Services.
- (h) “Provider” means Provider named on the signature page of the Agreement who offers Employment Assessment Services through the Marketplace.
- (i) “Provider Data” - means all electronic data or information submitted thru the Marketplace pertaining to an individual/donor.
- (j) “Provider Infringement” - means (i) any change, or enhancement in the Services made by Provider or any third party on behalf of Provider other than at the direction of, or as approved by, FormFox, (ii) Provider’s use of the Marketplace except as contemplated by this Agreement.
- (k) “SLA” - means the Service Level Agreement provided at [here](#).
- (l) “SOW” - Statement of Work/Order Form
- (m) “Third-Party Services” - Services, including but not limited to online, web-based applications and offline software products, lab testing, MRO reviews, and specimen collections provided by third parties
- (n) “Users” - Individuals who are authorized by Provider to use the Marketplace and who have been supplied user identifications and passwords by Provider (or by FormFox at Provider’s request).

1.2. ACCESS TO THE MARKETPLACE

- (a) Access. These Terms and Conditions govern your access to and use of the Marketplace. Subject to these Terms and Conditions, FormFox grants you a limited, non-exclusive, non-transferable, revocable license to access and use the Marketplace to obtain Administrative Services and Employment Assessment Services. You are responsible for persons who access or use the Marketplace on your behalf.
- (b) Permitted Use. You may only use the Marketplace in compliance with Law and in accordance with these Terms and Conditions and an Agreement. In the event of a conflict between an Agreement and these Terms and Conditions, the Agreement will control. You will not permit unauthorized persons to access or use the Marketplace. You will notify FormFox of any unauthorized access or use of the Marketplace of which you become aware.

- (c) Prohibited Uses. You will not (a) sell, resell, or lease the Marketplace or your access to the Marketplace, (b) create derivative works based on the Marketplace, (c) use the Marketplace to transmit or store anything which is infringing, libelous, in violation of Law, or in violation of someone else's rights, (d) copy, frame, or mirror any part of the Marketplace other than for your own internal business purposes, (e) interfere with or disrupt the integrity or performance of the Marketplace, (f) use the Marketplace to develop competitive products or services, copy any of its features, or reverse engineer the Marketplace, (g) utilize applications or websites which negatively affect the speed or performance of the Marketplace in a manner not approved by FormFox, (h) transmit any worms, viruses, or malicious code, or (i) interfere or circumvent the security features of the Marketplace or any related website. Your access to and use of the Marketplace may be subject to additional instructions or limitations established by FormFox from time to time.
 - (d) Information You Provide. You are solely responsible for the accuracy, quality, integrity, and legality of information that you transmit through the Marketplace, including information pertaining to individuals and employees. You represent and warrant that you are authorized to transmit such information through the Marketplace for use in connection with the Marketplace and that FormFox and Providers may use such information to provide Administrative Services and Employment Assessment Services. You will indemnify, defend, and hold harmless FormFox and the Providers for any claims made by third parties, including your contractors, agents, and employees (current, prospective, and former), relating to the use of such information in connection with the Marketplace.
 - (e) Connectivity and Availability. You are responsible for your own network access, and you are responsible for acquiring and updating compatible hardware, software, and devices that are necessary to access and use the Marketplace. The Marketplace may provide access to third-party links, content, and application programming interfaces that FormFox does not monitor or control and for which FormFox will not have any liability. The Marketplace may be subject to malfunctions and delays that are inherent in the use of the Internet and electronic communications. FormFox may shut down or suspend the Marketplace or your access to the Marketplace in its discretion, including for expected and unexpected maintenance and when FormFox reasonably believes that such action is necessary to comply with Law or to protect the integrity or functionality of the Marketplace.
 - (f) Marketplace may be subject to other limitations, such as: limited storage space, number of calls Provider is permitted against the application programming interface, and for Marketplace enabling Provider to provide public websites the number of page views by visitors to those websites. Any such limitations are specified in the applicable SOW. The Marketplace may provide real-time information to enable Provider to monitor Provider's compliance with such limitations.
 - (g) Disclaimer. EXCEPT AS STATED OTHERWISE IN THESE TERMS AND CONDITIONS, FORMFOX MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE MARKETPLACE OR YOUR ACCESS TO OR USE OF THE MARKETPLACE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, FORMFOX MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES OF ANY KIND REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, VOLUME, OR AVAILABILITY OF THE MARKETPLACE, OR THAT THE MARKETPLACE WILL BE UNINTERRUPTED OR ERROR-FREE. THE MARKETPLACE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." FORMFOX DOES NOT GUARANTEE THE QUALITY, SUITABILITY, SAFETY OR ABILITY OF THIRD-PARTY PROVIDERS. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY SERVICE OR GOOD REQUESTED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.
- 1.3. Payment.** FormFox shall pay Provider for services delivered in the Marketplace based on transactions occurring in the Marketplace, in accordance with the price list in effect for Provider in the Marketplace.
- (a) To receive payment, You must:
 - (i) Submit Substitute W-9 Identification Information which will be provided to program administrators/employers utilizing Provider services in the Marketplace;
 - (ii) Submit invoice within 180 days of the date of service. Provider expressly waives and forfeits its right to payment for Services not invoiced within 180 days from the date of service.
 - (b) *ACH PAYMENTS* - If properly authorized by You, all reasonable efforts will be made to pay by ACH every week for collections completed by the end of the week two weeks prior. For example, we will remit an ACH payment during the week of December 12, 2022, for collections made prior to Friday, December 2, 2022.
- 1.4. Representations & Warranties.** Provider represents and warrants, on behalf of itself and any User:
- (a) Provider has and will maintain all applicable licenses and permits necessary for the performance of services.

- (b) Provider will perform all services in compliance with applicable Federal, State, and local laws, rules, and regulations.
 - (c) Provider is solely responsible for quality assurance and compliance with applicable standards of care in the provision of services.
 - (d) If Provider is an MRO, Provider is participating in the Marketplace to facilitate delivery of services directly to the program administrator/employer who is the direct customer of the MRO's services. Provider has not entered into a relationship with any laboratory which is a conflict of interest under 49 CFR Part 40.125.
- Provider's breach of warranty may result in Provider's immediate suspension or termination from the Marketplace.

1.5. Third-Party Providers

- (a) FormFox may offer Third-Party services for sale under separate statements of work. Any other acquisition by Provider of third-party products or services, including but not limited to Third-Party applications and implementation, customization and other consulting services, and any exchange of data between Provider and any third-party provider, is solely between Provider and the applicable third-party provider. If Provider installs/enables Third-Party applications for use with the Marketplace, Provider acknowledges those Third-Party applications may access Provider Data as required for the interoperation of such Third-Party applications with the Marketplace. Marketplace features that interoperate with third party service providers (such as data integrations with laboratories, medical review officer companies, and background screening services companies) depend on the continuing availability of the Third-Party Application Programming Interface ("API") and program. If the API or program ceases to be available on reasonable terms, FormFox may cease providing such Marketplace features without entitling Provider to any refund, credit, or other compensation. Provider may restrict such access by restricting Users from installing or enabling such Third-Party applications. All functionality and/or use of third party service providers' services is not guaranteed by FormFox and is subject to a separate agreement authorization process provided by the third-party to Provider.

1.6. Intellectual Property

- (a) Marketplace Rights. All right, title, and interest in and to the Marketplace is owned by FormFox. FormFox retains all right, title, and interest in and to its products and services, including its software, forms, images, text, graphics, illustrations, logos, service marks, trademarks, copyrights, patents, photographs, videos, music, and all related intellectual property rights. Except as provided in these Terms and Conditions, you may not, and you may not permit others to, (a) reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer, or create derivative works of any of FormFox's products or services, (b) sell, license, sublicense, rent, lease, distribute, copy, publicly display, publish, adapt, or edit any of FormFox's products or services, or (c) circumvent or disable any security or technological features of FormFox's products or services. All rights with respect to the Marketplace which are not expressly granted herein are reserved by FormFox.
- (b) Trademarks. FormFox's product and service names or slogans are trademarks of FormFox. You may not copy, imitate, or use them, in whole or in part, without FormFox's prior written approval. In addition, the look and feel of the Marketplace website is the service mark, trademark, and/or trade dress of FormFox and you may not copy, imitate, or use it, in whole or in part, without FormFox's prior written consent. The names of other persons and products you encounter through the Marketplace might be the trademarks of their respective owners. Nothing in these Terms and Conditions should be understood as in any way granting any license or right to use any other person's trademark. All goodwill generated from the use of FormFox's trademarks is reserved for FormFox's use, exclusively.
- (c) Provider Information. As between you and FormFox, all right, title, and interest in and to all documents, materials, and information that you transmit through the Marketplace will remain your property. You grant FormFox and the Providers a limited, non-exclusive, non-transferable license to use such information to provide Administrative Services and Employment Assessment Services. Further, subject to any obligations regarding Protected Information, FormFox and its affiliates may use information that is transmitted through or generated from the Marketplace on an aggregated or de-identified basis for research, analytics, and benchmarking purposes and reporting to third parties.
- (d) No Violation. You and FormFox represent and warrant that the permitted use of your and FormFox's respective intellectual property rights as envisioned by these Terms and Conditions and your Agreement will not violate the intellectual property rights of any other party.
- (e) Suggestions. FormFox shall have a royalty-free, worldwide, transferable, sublicense-able, irrevocable, perpetual license to use or incorporate into the Marketplace any suggestions, enhancement requests, recommendations or other feedback provided by Provider, including Users, relating to the operation of the Marketplace.

1.7. Confidentiality

- (a) Confidential Information. You and FormFox acknowledge that in connection with your Agreement you or FormFox may receive nonpublic, proprietary, or confidential information (“Confidential Information”) from each other. You acknowledge that FormFox’s pricing, financial information, ownership information, and processes for operating the Marketplace are Confidential Information. You and FormFox agree to protect the confidentiality of each other’s Confidential Information with no less than a commercially reasonable degree of care.
- (b) Additional Agreements. Unless you and FormFox enter into a different agreement regarding the use and disclosure of Confidential Information, the Terms and Conditions for Mutual Confidentiality Agreements (v1) available at www.crlcorp.com/contracts will be incorporated by reference into these Terms and Conditions and apply to your and FormFox’s use and disclosure of Confidential Information.

1.8. Privacy and Security

- (a) Protected Information. You and FormFox acknowledge that you or FormFox may handle nonpublic information about individuals that may be protected under information privacy and security Laws (“Protected Information”). You and FormFox agree to protect the privacy and security of Protected Information, and establish and maintain appropriate safeguards to protect Protected Information, in a commercially reasonable manner that is at least as protective as that which is required by Law.
- (b) Additional Agreements. Unless you and FormFox enter into a different agreement regarding the use and disclosure of Protected Information, the Terms and Conditions for Data Privacy Protection Agreements (v1) available at www.crlcorp.com/contracts will be incorporated by reference into these Terms and Conditions and apply to your and FormFox’s use and disclosure of Protected Information in connection with your Agreement.

1.9. Disclaimers/Warranties/Limitation of Liability.

- (a) FORMFOX SHALL NOT BE LIABLE FOR ANY DAMAGES, LIABILITY OR LOSSES ARISING OUT OF: (i) YOUR PROVISION OF MARKETPLACE OR YOUR INABILITY TO PROVIDE SERVICES; OR (ii) ANY TRANSACTION OR RELATIONSHIP BETWEEN YOU AND ANY THIRD PARTY, EVEN IF FORMFOX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FORMFOX SHALL NOT BE LIABLE FOR DELAY OR FAILURE IN PERFORMANCE RESULTING FROM CAUSES BEYOND FORMFOX'S REASONABLE CONTROL.
- (b) FORMFOX DOES NOT WARRANT OR SUPPORT THIRD-PARTY PRODUCTS OR SERVICES, WHETHER OR NOT THEY ARE DESIGNATED BY FORMFOX AS “CERTIFIED” OR OTHERWISE. FORMFOX HAS NO LIABILITY RELATED TO PROVIDER’S USE OF THIRD-PARTY APPLICATIONS OR SERVICES OR FOR ANY THIRD-PARTY PROVIDER’S ACTS OR OMISSIONS. FORMFOX IS NOT RESPONSIBLE FOR ANY DISCLOSURE, MODIFICATION OR DELETION OF PROVIDER DATA RESULTING FROM ACCESS BY THIRD-PARTY APPLICATION PROVIDERS.
- (c) FORMFOX EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND RELATING TO THE MARKETPLACE OR THE WORK PRODUCT PRODUCED BY THE MARKETPLACE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, FORMFOX MAKES NO WARRANTY THAT THE MARKETPLACE OR ANY WORK PRODUCT WILL MEET PROVIDER REQUIREMENTS, THAT THE RESULTS OBTAINED FROM THE USE OF THE FOREGOING WILL BE ACCURATE OR ERROR-FREE, OR THAT MARKETPLACE OR WORK PRODUCT WILL MEET PROVIDER’S EXPECTATIONS. FORMFOX’S AGENTS HAVE NO AUTHORITY TO GIVE ANY WARRANTIES ON BEHALF OF FORMFOX.
- (d) TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, MULTIPLE, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE RELATED TO OR IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY PROVISION OR USE OF THE MARKETPLACE, WHETHER IN AN ACTION BASED ON CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF THE NEGLIGENCE (EITHER ACTIVE, AFFIRMATIVE, SOLE, OR CONCURRENT) OF FORMFOX, EVEN IF ADVISED OR INFORMED IN ADVANCE OF THE POSSIBILITY THEREOF OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

- (e) WITH THE EXCEPTION OF BREACH OF A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, INDEMNIFICATION OBLIGATIONS, OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS ACCESS LICENSE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY PROVIDER HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT PROVIDER PAYMENT OBLIGATIONS.

1.10. Indemnification.

- (a) General Indemnification. Each party ("Indemnifying Party") shall indemnify and save the other party and its directors, officers, employees, agents and representatives ("Indemnified Party") harmless from and against any and all claims, demands, suits, actions, payments, and judgments (including reasonable attorney's fees) arising from personal injuries or other claims of any nature asserted, brought or recovered against the Indemnified Party as a result of any negligent acts, omissions, breaches of any representations or warranties herein, or provision of the Marketplace by the Indemnify Party, or its employees arising out of or related to this Agreement, including any and all reasonable expense, legal or otherwise, incurred by Indemnified Party in the defense of any claim or suit.
- (b) Infringement Indemnification by FormFox. FormFox will indemnify and defend Provider, its officers, directors and employees against any third party claims arising out of Provider's use of FormFox's intellectual property in the provision of the Marketplace under this Access License including, without limitation, violation of any trade secrets, proprietary information, trademark, copyright or patent rights arising out of or related to this Access License. Provider will give prompt notice of any claim covered by the indemnification and will cooperate with FormFox, at FormFox's expense, in the defense of the claim if requested.

For any third party claim that Provider or FormFox receives in connection with the Marketplace, or to minimize the potential for a claim, FormFox may, at its option and expense perform one or all of the following actions provided that if FormFox is enjoined from continuing to use the FormFox's intellectual property, FormFox must perform one or more of the following actions within one month from the date of injunction:

- (i) *Replacement:* Replace FormFox's intellectual property by implementing a non-infringing product of equivalent functional and performance capability;
 - (ii) *Modification:* Modify FormFox's intellectual property to avoid the infringement without eliminating the functional and performance capabilities of FormFox's intellectual property as described in its supporting documentation and the specifications attached to this Access License;
 - (iii) *Re-license:* Obtain a license from the third party claiming infringement for FormFox's use of FormFox's intellectual property.
- (c) Infringement Indemnification by Provider. Provider will defend FormFox against any third party claims and will indemnify and hold FormFox harmless from any resulting damage awards or settlement amounts in any cause of action to the extent such cause of action is based on the occurrence of Provider Infringement or FormFox's use of Provider Confidential Information as contemplated by this Access License.
 - (d) Claims for Indemnity. Claims for indemnity under this Access License shall be subject to the following additional terms: (i) The indemnified party shall provide prompt written notice, in reasonable detail, of any claim for which it may seek indemnification hereunder; (ii) If such notice is not provided within the time stated above, the indemnified party nonetheless shall be entitled to indemnification by the indemnifying party, except to the extent that indemnifying party is actually prejudiced by the late receipt of such notice; (iii) The Indemnified Party agrees to cooperate with Indemnifying Party in a commercially reasonable manner in the defense of such claim. Indemnifying Party shall at all times keep the Indemnified Party reasonably apprised of the status of any such action; (iv) The Indemnifying Party shall not effect a settlement of any such claim, without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld. It shall not be considered unreasonable to withhold consent if the settlement contains any admission on the part of the Indemnified Party of wrongdoing or contains any sanctions other than the payment of money that the Indemnifying Party agrees to and is able to pay.

- 1.11. Insurance.** Each party, at its sole cost and expense, shall procure and maintain policies of comprehensive general liability and other insurance in the minimum amounts of \$1,000,000.00 per claim/\$2,000,000.00 aggregate to insure such party and its officers, agents, and employees against liability, claims or damages in connection with the performance of such party's responsibilities under this Access License. Evidence of each party's policies shall be submitted to the other upon the other's written request. Failure of a party to have insurance coverage, inability to

obtain insurance coverage, or any inadequacy of insurance coverage of such party shall not relieve or decrease the indemnifying party of its liabilities under this Access License.

1.12. Compliance with Law.

- (a) Compliance with Non-US Law. FormFox does not make any representation that the Marketplace or any material or information provided through the Marketplace is appropriate to or available in locations outside of the United States. If Provider accesses the Marketplace from outside of the United States, Provider is responsible for compliance with all applicable laws.
- (b) Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Marketplace. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Provider shall not permit Users to access or use the Marketplace in violation of any U.S. export embargo, prohibition or restriction.
- (c) Federal Government End Use Provisions. FormFox provide the Marketplace, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Marketplace include only those rights customarily provided to the public as defined in this Access License. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with FormFox to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

2. FORCE MAJEURE

- 2.1. **Force Majeure Events.** Except for payment obligations, neither Party will be liable for any failure or delay in the performance of these Terms and Conditions or be deemed to have breached these Terms and Conditions when such failure or delay results from any act of God, flood, fire, earthquake, explosion, terrorist act, civil unrest, labor disturbance, transportation disturbance, telecommunication breakdown, power outage, unusually severe weather, or other event that is beyond its reasonable control (each a “**Force Majeure Event**”).
- 2.2. **Notice of Force Majeure.** In the event of a Force Majeure Event, the impacted Party will promptly notify the other Party and use commercially reasonable efforts to end or minimize the effects of the Force Majeure Event. Either Party may terminate these Terms and Conditions upon notice to the other Party if a Force Majeure Event lasts for more than 45 days.

3. AMENDMENT AND TERMINATION

- 3.1. **General Amendments.** FormFox may amend these Terms and Conditions to make amendments that are applicable to all users of the Marketplace by providing notice of such amendments on www.crlcorp.com/contracts, on FormFox’s website, or to you in accordance with the notice provisions of these Terms and Conditions. You may terminate your Agreement upon notice to FormFox if you object to such amendments. Your continued use of the Marketplace following notice of amendment will constitute your acceptance of such amendment.
- 3.2. **Termination Rights.** Either party, for any reason or no reason, may terminate this Agreement by ninety (90) day prior written notice to the other party.
- 3.3. **Effect of Expiration or Termination.** Upon the expiration or termination of your Agreement, your access to the Marketplace will end. You will return all technology provided under this Agreement within 30 days of termination. We will provide you with an airbill for the return.

4. RELATIONSHIP OF THE PARTIES

- 4.1. **Independent Contractors.** The Parties are independent contractors and nothing in these Terms and Conditions creates any joint venture, partnership, or agency relationship. Neither Party, by virtue of these Terms and Conditions,

will have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other Party. Each Party will exercise its independent judgment in connection with these Terms and Conditions and assumes responsibility for the actions of its personnel and will be solely responsible for their supervision, daily direction and control, wage rates, income tax withholdings, disability benefits, and the manner and means through which work performed in connection with these Terms and Conditions will be accomplished.

- 4.2. Assignment.** Neither Party may assign these Terms and Conditions, by merger, operation of law, or otherwise, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign these Terms and Conditions to a successor in connection with an internal reorganization or to an entity which acquires all or substantially all of its assets or ownership interests, provided that the assignor Party provides prompt written notice to the other Party and that the assignee assumes all of the assignor's obligations under these Terms and Conditions.
- 4.3. Communication and Advertising.** Neither Party will issue any public communication regarding these Terms and Conditions or the other Party without the other Party's prior written consent. No advertising, marketing, promotional, or other material using the name, trademark, service mark, logo, or other proprietary designation of a Party may be used without such Party's prior written consent.

5. DISPUTE RESOLUTION

- 5.1. Notice and Consultation.** Each Party agrees it is in its best interest to attempt to resolve disputes amicably when possible. Accordingly, except with respect to (a) matters involving bankruptcy, (b) instances in which a Party is seeking injunctive relief, or (c) instances in which a Party is seeking payment for amounts due under these Terms and Conditions, before commencing arbitration or any other proceeding against the other Party in connection with these Terms and Conditions, a Party must first send notice to the other Party and describe its claims in reasonable detail and afford the other Party at least 10 days to attempt to resolve any claims through good faith negotiation and consultation.
- 5.2. Arbitration.** Except with respect to (a) matters involving bankruptcy, (b) instances in which a Party is seeking injunctive relief, or (c) instances in which a Party is seeking payment for amounts due under these Terms and Conditions, any claim or dispute between the Parties relating to these Terms and Conditions, regardless of the legal or equitable theory (contract, tort, or otherwise) upon which it is based, which is not settled through negotiation and consultation as provided above, will be submitted to binding arbitration before one arbitrator. The arbitration will take place in Lenexa, Kansas. The arbitration will be conducted in accordance with the commercial arbitration rules of the American Arbitration Association and in accordance with the substantive law that would be applied in any court of law based on the governing law provision in these Terms and Conditions. The arbitrator may not, and the Parties will direct the arbitrator not to, (a) award any damages which are excluded by these Terms and Conditions or in excess of limitations provided in these Terms and Conditions, or (b) ignore or vary the terms of these Terms and Conditions. The arbitrator will, and the Parties will direct the arbitrator to, follow applicable principles of law as if in a court of law and issue a reasoned opinion. Judgment upon the decision rendered by the arbitrator may be entered in any court having jurisdiction thereof. All arbitration fees will be split equally by the Parties. Any such arbitration award will be final and binding upon the Parties.

6. CHOICE OF LAW AND FORUM

- 6.1. Governing Law.** These Terms and Conditions and all claims relating thereto, regardless of the legal or equitable theory (contract, tort, or otherwise) upon which they are based, will be governed by the laws of the State of Kansas without regard to conflict of laws principles that would require the application of any other Law.
- 6.2. Jurisdiction.** Without limiting the arbitration agreement set forth above, each Party submits to the jurisdiction of the courts of Johnson County, Kansas and the United States District Court for the District of Kansas in any proceeding related to these Terms and Conditions that is not arbitrated, and any claims by Provider against FormFox that cannot be arbitrated, regardless of the legal or equitable theory (contract, tort, or otherwise) upon which they are based, may only be brought in such courts.

6.3. Waiver of Jury Trial. NOTWITHSTANDING ANYTHING TO THE CONTRARY, EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING RELATING TO THESE TERMS AND CONDITIONS, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH IT IS BASED.

7. MISCELLANEOUS

- 7.1. Interpretations.** The term “writing” and any derivation thereof includes email. References to prices, values, or monetary amounts refer to United States dollars. Headings are for convenience of reference only and may not be used for interpretation. References to contracts, including the Agreement and these Terms and Conditions, and provisions of Law mean such contracts and provisions of Law as amended, supplemented, or modified. The term “including” has the inclusive meaning frequently identified with the phrase “including, but not limited to” or “including, without limitation.” Unless the context otherwise clearly indicates, defined terms will have comparable meanings when used in their plural or singular forms.
- 7.2. Notices.** Notices under these Terms and Conditions must be in writing. Notice to a Party will be deemed effective when delivered to the notice email address or mailing address for such Party on the signature page to an Agreement or, with respect to Laboratory, to 8433 Quivira Road, Lenexa, Kansas 66215, Attn: Marketplace Contracts, MarketplaceContracts@crlcorp.com, or such other email address or mailing address that a Party may prescribe by providing a notice that complies with this section to the other Party. Notices sent by mail must be sent by either certified mail, costs prepaid, or by a nationally recognized carrier, costs prepaid, that provides a record of delivery.
- 7.3. Computing Time Periods.** Unless provided otherwise by Law, when computing time periods under these Terms and Conditions, the first day of the period will not be counted, and every other day, including Saturdays, Sundays, and Holidays, will be counted. If the last day of the period is a Saturday, Sunday, or Holiday, the period will continue to run until the next day that is not a Saturday, Sunday, or Holiday. The term “**Holiday**” means a day on which the Federal Reserve Bank for the District of Kansas is closed. All references to time of day will be to United States Central Standard Time.
- 7.4. Entire Agreement.** Except as explicitly stated otherwise here, the Agreement and these Terms and Conditions set forth the Parties complete and exclusive agreement regarding the subject matter hereof and supersedes all prior or contemporaneous agreements regarding the same. These Terms and Conditions may only be modified or amended in a writing executed by each Party. No failure, delay, or single or partial exercise of any right, power, or privilege by a Party will operate as a waiver of any right, power, or privilege of such Party. All remedies under these Terms and Conditions are cumulative unless stated otherwise in these Terms and Conditions.
- 7.5. Severability.** If any provision of these Terms and Conditions is held invalid or unenforceable, the other provisions of these Terms and Conditions will remain in full force and effect. Any provision of these Terms and Conditions held invalid or unenforceable in part will remain in full force and effect to the extent not held invalid or unenforceable.
- 7.6. Survival.** Terms in these Terms and Conditions which expressly or by their nature are intended to survive the expiration or termination of an Agreement or these Terms and Conditions will continue in full force and effect following the expiration or termination of the Agreement or these Terms and Conditions, subject to any limitations stated in these Terms and Conditions.
- 7.7. Opportunity for Counsel.** Each Party acknowledges it has had an opportunity to consult with an attorney of its choosing before entering into an Agreement. Each Party agrees that no rule of construction should be applied to construe any term of an Agreement or these Terms and Conditions more strictly against any one Party. Except when stated differently in these Terms and Conditions, each Party will be responsible for its own attorneys’ fees in connection with these Terms and Conditions and any dispute arising out of or relating to these Terms and Conditions.

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Basic Support Services

Includes:

- Web-based documentation
- Telephone Support available Hours (M-F 6AM - 6PM MST)
- Telephone, E-mail, Fax or Web contact for Customer Support
 - Toll-Free (1-800-948-4070)
 - e-mail: support@formfox.com
 - fax: 801-466-0095
- Incident Tracking

Telephone Support

Telephone support service is provided to end users to help resolve issues related to unexpected software operations associated with the use of the applications. FormFox or its support staff cannot be held liable for the performance nor issues created as a result of suggestions or advice related to the operation of third party applications.

Incident Tracking

FORMFOX utilizes Incident tracking software to log and submit technical support issues for review. Subscribers may call in to receive periodic updates regarding an Incident issued a tracking number.

Service Level Agreement

1.1 General Provisions. FormFox shall make commercially reasonable efforts to meet the following Service Level Availability.

1.2 Definitions. Unless otherwise defined herein, capitalized terms used in this Schedule are as defined in the MSA.

- (a) Alert - An electronic message generated by a FormFox monitoring device and delivered to FormFox upon the occurrence of an Incident.
- (b) Business Hours - Monday through Friday, 8:00 am – 5:00 pm (Mountain)
- (c) Incident - Any Provider inquiry or concern regarding the application reported to FormFox
- (d) Emergency Maintenance - Any period during which there is an outage or other connectivity problem affecting the ability to transmit data within any portion of the system, or degradation in the quality or performance of any element of the system below the applicable requirements for the element. Emergency Maintenance does not include outages, connectivity, or degradation problems due to a force majeure event. Routine scheduled maintenance performed during Preventative Maintenance shall not be considered to be Emergency Maintenance.
- (e) Preventative Maintenance - change controls being done to: (a) support on-going product and operational projects; (b) To ensure optimal performance; (c) To deploy non-critical service packs or patches; (d) To conduct periodic vulnerability, penetration, and/or redundancy testing.
- (f) Severity - The assessed possible risk or effect of a problem on business operations. All notifications, escalations, and standards for responding to problems are set by Severity. Elements used in determining the Severity of a problem include: (a) The criticality of the applications being affected; (b) The number of Users affected; and (c) The visibility of the problem by Users.
- (g) Start Time - The earlier of: (i) the time FormFox receives a telephone call from Provider reporting an Incident or (ii) an Alert occurs notifying FormFox of an Incident.

1.3 Service Level Availability

- (a) **System Available** - 24 hours daily, excluding Emergency Maintenance and Preventative Maintenance Windows
- (b) **Maintenance Notices**
 - (i) Preventative Maintenance – will be performed during the preventative Maintenance Window listed herein.
 - (ii) Emergency Maintenance – FormFox will attempt to give Provider as much notice as possible of Emergency Maintenance.
 - (iii) Maintenance Windows
 1. When possible, FormFox will schedule Preventative Maintenance Weekdays – 10:00 PM - 2:00 AM (Mountain Time); or Weekends – 6:00 PM Friday – 4:00 AM Monday (Mountain Time)
 2. Preventative Maintenance shall not be scheduled during Business Hours.

1.4 Incident Reporting, Response, and Resolution Service Levels

- (a) Incident Reporting. Provider shall report any Incident to FormFox along with a description of the Incident, the severity of the Incident (determined in Provider’s reasonable discretion in conformance with the table below), and

supporting information outlining the processes Provider was following when the Incident occurred and/or was detected, and any pertinent documentation showing results or evidence of the Incident (the foregoing information and documentation collectively referred to as an “Incident Report”). An Incident Report shall include at a minimum the following information:

- Steps to reproduce the Incident (if known to Provider)
- Screen shots related to the Incident (if any)
- Information relating to the FormFox process affected by the Incident

The more comprehensive Provider’s Incident Report, the better FormFox will be able to properly assess the severity of the Incident. FormFox is not obligated to provide Incident correction services unless Incident Report includes the minimum information described in this section.

- (b) Incident Response. FormFox shall use commercially reasonable efforts to respond to Incident Reports and execute resolution in a timely and expeditious manner.
- (c) Incident Resolution. An Incident is deemed resolved when the remedy ticket is closed by FormFox following confirmation that Provider has resumed normal and prior business operations.
- FormFox shall identify, track and report Incidents and trends to Provider and will take corrective measures to correct FormFox-related causes of the Incidents as well as make remediation recommendations to Provider, as appropriate, to prevent reoccurring Incidents.
 - Concurrent incidents of similar severity levels will be prioritized by Provider, based upon impact.
- (d) Separate Measurement. Incident response and resolution service levels shall be measured separately. For each Incident, FormFox must achieve the Service Levels for both response and resolution each month.