

TERMS AND CONDITIONS FOR MARKETPLACE USER AGREEMENTS

These Terms and Conditions are part of a Marketplace User Agreement (the “**Agreement**”) between FormFox and the Client 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. DEFINITIONS

- 1.1. **Defined Terms.** For purposes of these Terms and Conditions (also referred to herein as these “**Terms**”), the following terms will have the following meanings:
- (a) “**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.
 - (b) “**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.
 - (c) “**Law**” means any applicable federal, state, or local law, rule, and regulation, as amended.
 - (d) “**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.
 - (e) “**Provider**” means a person who offers Employment Assessment Services through the Marketplace.
 - (f) “**You,**” or “**your,**” regardless of capitalization, means the Client named on the signature page of the Agreement.

2. ACCESS TO THE MARKETPLACE

- 2.1. **Access.** These Terms govern your access to and use of the Marketplace. Subject to these Terms, 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.
- 2.2. **Permitted Use.** You may only use the Marketplace in compliance with Law and in accordance with these Terms and an Agreement. In the event of a conflict between an Agreement and these Terms, 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.
- 2.3. **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.

- 2.4. **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.
- 2.5. **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.
- 2.6. **Disclaimer.** EXCEPT AS STATED OTHERWISE IN THESE TERMS, 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, OR AVAILABILITY OF THE MARKETPLACE, OR THAT THE MARKETPLACE WILL BE UNINTERRUPTED OR ERROR-FREE.

3. ADMINISTRATIVE SERVICES

- 3.1. **Generally.** FormFox will provide the Administrative Services in compliance with Law and your Agreement. Without limiting the foregoing, unless provided otherwise in your Agreement, FormFox will pay Providers for Employment Assessment Services you obtain through the Marketplace, and you will pay FormFox (or its affiliate Clinical Reference Laboratory, Inc.) the fees set forth on Exhibit A to your Agreement.
- 3.2. **Fees.** FormFox (or its affiliate Clinical Reference Laboratory, Inc.) will invoice you for the fees. All fees are exclusive of taxes. You will be responsible for all applicable sales, use, and excise taxes. You must provide an exemption certificate if you claim exemption from tax. FormFox may increase the fees or add surcharges upon 60 days' notice to you.
- 3.3. **Payment Terms.** You will pay all undisputed invoiced amounts within 30 days of receipt of invoice. Undisputed amounts which are not timely paid will accrue interest at the rate of 1.5% per month or the highest rate permitted by Law, whichever is less. Your obligation to pay undisputed amounts is absolute and may not be set off against any other amounts or withheld for any other reason. You will reimburse FormFox for any reasonable costs or expenses that are incurred in collecting amounts owed from you, including reasonable attorneys' fees and court costs.
- 3.4. **Disputed Amounts.** If you dispute an invoiced amount, you must notify FormFox within 10 days of receipt of invoice and provide a detailed description of the reasons for such dispute. Absent fraud, you will be deemed to have waived disputes concerning invoiced amounts which are not disputed in the foregoing

manner. FormFox may suspend your access to the Marketplace if you fail to timely pay any undisputed amount or if you and FormFox are unable to resolve any disputed amount within 30 days.

- 3.5. **Financial Assurance.** If you admit in writing your inability to pay your debts as they become due, make a general assignment for the benefit of creditors, institute or agree to the institution of proceedings in bankruptcy or insolvency, or are the subject of a court order relating thereto, or if FormFox in good faith determines that you may not be able to timely pay fees due under your Agreement, FormFox may suspend your access to the Marketplace until you deliver adequate financial assurance, which may include advance cash payment, a guarantee from a creditworthy entity acceptable to FormFox, or a letter of credit from a nationally recognized financial institution.
- 3.6. **Positivity Adjustment.** With respect to any Employment Assessment Services involving laboratory testing for drugs of abuse, if the average number of specimens submitted by you which test positive under initial screening tests is more than 12% in any three-month period, FormFox may notify you, and you and FormFox will discuss in good faith an appropriate surcharge or increase in fees to account for the increased cost from the higher-than-expected positivity rates.
- 3.7. **Disclaimer.** EXCEPT AS STATED OTHERWISE IN THESE TERMS, FORMFOX MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE ADMINISTRATIVE SERVICES, 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, OR AVAILABILITY OF THE ADMINISTRATIVE SERVICES, OR THAT SUCH SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

4. EMPLOYMENT ASSESSMENT SERVICES

- 4.1. **Choice of Services.** You are responsible for choosing the Employment Assessment Services you need. FormFox does not recommend or require that you choose any particular Provider, other than you must choose a Provider that is available through the Marketplace if you wish to obtain Employment Assessment Services through the Marketplace. You are responsible for paying Providers for services that are not obtained through the Marketplace.
- 4.2. **Provider Relationships.** FormFox will not provide any of the Employment Assessment Services. The Employment Assessment Services will be provided by Providers who are third party independent contractors for whom FormFox will not have any liability or responsibility, other than with respect to responsibilities undertaken by FormFox in connection with the Administrative Services. When you obtain Employment Assessment Services through the Marketplace, you will be deemed to have obtained such services through an independent relationship between you and the applicable Provider. The Employment Assessment Services may be subject to other terms and conditions established by the applicable Provider.
- 4.3. **Laboratory Services.** You acknowledge that laboratory testing services you obtain through the Marketplace may be provided by FormFox's affiliate Clinical Reference Laboratory, Inc. ("**CRL**"). Laboratory testing by CRL will be subject to the Terms and Conditions for Marketplace Laboratory Services (v1) available at www.crlcorp.com/contracts (the "**Laboratory Terms and Conditions**"). You agree to be bound by the Laboratory Terms and Conditions with respect to laboratory testing you obtain from CRL through the Marketplace, and you agree that CRL, as a third-party beneficiary, may enforce the Laboratory Terms and Conditions.
- 4.4. **Release and Indemnification.** Any claims, complaints, or disagreements you may have with respect to the Employment Assessment Services will be the responsibility of the applicable Provider. You release and forever discharge FormFox from any claims you may have relating to the Employment Assessment Services. You agree to indemnify, defend, and hold harmless FormFox for and against any claims made

by third parties, including your contractors, agents, and employees (current, prospective, and former), relating to your use of the Employment Assessment Services.

- 4.5. **Disclaimer.** FORMFOX MAKES NO REPRESENTATIONS, WARRANTIES, OR GUARANTEES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE EMPLOYMENT ASSESSMENT SERVICES OR ANY PROVIDER, 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, ACCURACY, QUALITY, SUITABILITY, OR AVAILABILITY OF THE EMPLOYMENT ASSESSMENT SERVICES OR ANY PROVIDER, OR THAT THE EMPLOYMENT ASSESSMENT SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT WITH RESPECT TO ANY REPRESENTATIONS, WARRANTIES, OR GUARANTEES MADE BY ANY PROVIDER, FOR WHICH FORMFOX IS NOT RESPONSIBLE, THE EMPLOYMENT ASSESSMENT SERVICES WILL BE PROVIDED TO YOU “AS IS,” “AS AVAILABLE,” AND “AT YOUR OWN RISK,” TO THE FULLEST EXTENT PERMITTED BY LAW.

5. AMENDMENT AND TERMINATION

- 5.1. **General Amendments.** FormFox may amend these Terms to make amendments that are applicable to all users of the Marketplace by providing notice of such amendments on the Marketplace, on FormFox’s website, or to you in accordance with the notice provisions of these Terms. 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.
- 5.2. **Termination Rights.** You or FormFox may terminate your Agreement (a) after the Initial Term, for convenience upon 90 days’ notice, (b) upon 30 days’ notice in the event of a material breach that is not cured within such period, or upon notice if such breach is incapable of cure, (c) if you or FormFox admit in writing an inability to pay debts as they become due, make a general assignment for the benefit of creditors, institute or agree to the institution of proceedings in bankruptcy or insolvency, or are the subject of a court order relating thereto, or (d) if you or FormFox reasonably believe that termination is necessary to comply with Law or protect the integrity or functionality of the Marketplace.
- 5.3. **Effect of Expiration or Termination.** Upon the expiration or termination of your Agreement, your access to the Marketplace will end, and you will remain liable for any fees you incurred before such expiration or termination.

6. CONFIDENTIALITY

- 6.1. **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.
- 6.2. **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 apply to your and FormFox’s use and disclosure of Confidential Information.

7. PRIVACY AND SECURITY

- 7.1. **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.

- 7.2. **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 apply to your and FormFox's use and disclosure of Protected Information in connection with your Agreement.

8. INTELLECTUAL PROPERTY

- 8.1. **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, 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.
- 8.2. **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 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.
- 8.3. **Client 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.
- 8.4. **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 your Agreement will not violate the intellectual property rights of any other party.

9. COMPLIANCE WITH LAW

- 9.1. **General.** You and FormFox will comply with all Laws in connection with your Agreement and your use of the Marketplace. If you or FormFox reasonably believe that any Law could restrict your or FormFox's ability to perform your Agreement in compliance with Law, you or FormFox may give the other notice of intent to amend the Agreement in a manner that permits compliance with Law, and you and FormFox will negotiate in good faith to amend the Agreement in such manner while preserving the substance of the relative economic positions and rights of each other.
- 9.2. **Nature of Services.** The Marketplace and all services offered in connection therewith are offered for employment related purposes, including workplace drug and alcohol testing programs, fitness for duty programs, and workplace qualification programs. Such services are not intended to diagnose or treat any

medical condition, disease, or illness and should not be used as a substitute for seeking professional medical advice or treatment. Such services are not reimbursable by any federal, state, or private health care benefit program or insurance plan (each a “**Third-Party Plan**”), and you and FormFox agree to not submit claims to or seek reimbursement from any Third-Party Plan for any portion of such services.

9.3. **No Prohibited Referrals.** No part of your Agreement is intended to induce or reward the referral of persons in violation of Law. You and FormFox acknowledge that there is no requirement under your Agreement or any other agreement to refer any persons or referral sources to the other party. No payment may be made under your Agreement for the referral of persons or for the purchase or ordering of any items or services reimbursed in whole or in part under any Third-Party Plan.

9.4. **Fee Compliance.** The fees to which you and FormFox have agreed have been mutually agreed upon through an arms-length transaction based on the totality of the contemplated services, are consistent with fair market value, do not include a split or percentage of any fees charged for any professional services provided in relation to your Agreement, and are not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between you and FormFox for which payment may be made in whole or in part under any Third-Party Plan.

10. LIMITATION OF LIABILITY

10.1. **Exclusion of Certain Kinds of Damages.** Except with respect to indemnifiable third-party claims under these Terms, neither you nor FormFox will be liable to the other under any circumstances for any indirect, incidental, consequential, special, exemplary, lost profits, or punitive damages of any kind or nature, regardless of the legal or equitable theory (contract, tort, or otherwise) upon which a claim is based.

10.2. **Liability Cap.** Regardless of the legal or equitable theory (contract, tort, or otherwise) upon which a claim is based, FormFox will not be liable to you under any circumstances as to any claim or group of related claims, including indemnifiable third-party claims, for more than the amount of fees that you have paid under your Agreement during the 12 months preceding such claim or group of related claims.

11. FORCE MAJEURE

11.1. **Force Majeure Events.** Except for payment obligations, neither you nor FormFox will be liable for any failure or delay in performance or be deemed to have breached your Agreement 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 your or FormFox’s reasonable control (each a “**Force Majeure Event**”).

11.2. **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. You or FormFox may terminate your Agreement upon notice to the other if a Force Majeure Event lasts for more than 45 days.

12. ADDITIONAL COMMITMENTS

12.1. **Minimum Purchase Commitment.** If Exhibit A to your Agreement provides for a minimum purchase commitment, you will purchase the minimum amount of services provided on Exhibit A or pay FormFox the amount that you would have paid if you had abided by such minimum purchase commitment; provided, however, that any minimum purchase commitment will not apply and will be reduced proportionately during such times that the services for which such minimum purchase commitment applies are not available, and you may terminate any minimum purchase commitment upon notice to FormFox in the event of any unapproved fee increase to which you object.

- 12.2. **Exclusive or Primary Service Commitment.** If Exhibit A to your Agreement provides for an exclusive or primary service commitment, you will abide by the exclusive or primary service commitment provided on Exhibit A; provided, however, that no exclusive or primary service commitment will apply during such times that the services for which such commitment applies are not available, and you may terminate any exclusive or primary service commitment upon notice to FormFox in the event of any unapproved fee increase to which you object.
- 12.3. **Medical Review Officers.** If indicated on Exhibit A to your Agreement, you have chosen to have the fees of your medical review officer (“**MRO**”) passed through to you. If indicated on Exhibit A, additional MRO fees for non-DOT services will also be charged to you. You are responsible for choosing your MROs and maintaining a separate and independent relationship with your MROs. FormFox does not contract with or recommend any particular MRO. You acknowledge and agree that you have been given the opportunity to select the MROs of your choosing.

13. RELATIONSHIP OF THE PARTIES

- 13.1. **Independent Contractors.** You and FormFox are independent contractors and nothing in your Agreement creates any joint venture, partnership, or agency relationship. Each party will exercise its independent judgment in connection with your Agreement 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 your Agreement will be accomplished.
- 13.2. **Assignment.** Neither you nor FormFox may assign your Agreement, by operation of law or otherwise, without the prior written consent of the other. Notwithstanding the foregoing, either you or FormFox may assign your Agreement to a successor in connection with an internal reorganization or to an entity which acquires all or substantially all of your or FormFox’s assets or ownership interests, provided that the assignor provides prompt written notice to the other party and that the assignee assumes all of the assignor’s obligations under your Agreement.
- 13.3. **Communication and Advertising.** Neither you nor FormFox will issue any public communication regarding your Agreement 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 you or FormFox may be used without the other party’s prior written consent.

14. DISPUTE RESOLUTION

- 14.1. **Notice and Consultation.** You and FormFox agree it is in your and FormFox’s best interests 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 an Agreement, before commencing arbitration or any other proceeding against the other party in connection with an Agreement, 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.
- 14.2. **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 an Agreement, any claim or dispute between you and FormFox relating to an Agreement, 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. The arbitrator may not, and the parties will direct the arbitrator not to, (a) award any damages which

are excluded by these Terms or in excess of limitations provided in these Terms, or (b) ignore or vary the terms of an Agreement. 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.

15. CHOICE OF LAW AND FORUM

- 15.1. **Governing Law.** Your Agreement, 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.
- 15.2. **Jurisdiction.** Without limiting the arbitration agreement set forth above, you and FormFox submit 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 your Agreement that are not arbitrated, and any claims by you 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.
- 15.3. **Waiver of Jury Trial.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, YOU AND FORMFOX KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING RELATING TO YOUR AGREEMENT, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH IT IS BASED.

16. MISCELLANEOUS

- 16.1. **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 your Agreement and these Terms, 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.
- 16.2. **Notices.** Notices under an Agreement 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 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.
- 16.3. **Computing Time Periods.** Unless provided otherwise by Law, when computing time periods under these Terms, 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.
- 16.4. **Entire Agreement.** These Terms, together with the Agreement into which they are incorporated, set forth your and FormFox's complete and exclusive agreement regarding the subject matter hereof and supersede all prior or contemporaneous agreements regarding the same. Your Agreement 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 are cumulative unless stated otherwise in these Terms.

- 16.5. **Severability.** If any provision of an Agreement or these Terms is held invalid or unenforceable, the other provisions will remain in full force and effect. Any provision of an Agreement or these Terms held invalid or unenforceable in part will remain in full force and effect to the extent not held invalid or unenforceable.
- 16.6. **Survival.** Terms which expressly or by their nature are intended to survive the expiration or termination of an Agreement or these Terms will continue in full force and effect following such expiration or termination, subject to any limitations stated in an Agreement or these Terms.
- 16.7. **Opportunity for Counsel.** You and FormFox acknowledge that you and FormFox have had an opportunity to consult with an attorney of your and FormFox's 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 more strictly against the other party. Except when stated differently in an Agreement or these Terms, each party will be responsible for its own attorneys' fees in connection with an Agreement and any dispute arising out of or relating to an Agreement.

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