FORMFIRE™

SOFTWARE AS A SERVICE AGREEMENT

THIS AGREEMENT CONSITUTES A BINDING CONTRACT AND GOVERNS THE USE OF AND ACCESS TO FORMFIRE'S SOFTWARE AND SERVICES, BY YOU, AND ALL YOUR ASSOCIATED AGENTS AND END USERS.

By accepting this Agreement (either by executing a Service Order, accessing or using a Service, or authorizing or permitting any Administrative User or End User to access or use a Service), you agree to be bound by this Agreement. If you are entering into this Agreement on behalf of a company, organization or another legal entity (an "Entity"), You are agreeing to this Agreement for that Entity and representing to FormFire, LLC that you have the authority to bind such Entity and its Affiliates to this Agreement. If you do not have such authority, or if you do not agree with this Agreement, you must not accept this Agreement and may not use any of the Services.

This Software as a Service (SaaS) Agreement (the "**Agreement**"), is by and between FormFire, LLC, an Ohio limited liability company with offices located at 1100 Superior Ave, Suite 1650, Cleveland, Ohio 44114 ("**Provider**") and **Customer**.

WHEREAS, Customer wishes to procure from Provider the insurance consulting and brokerage software services described herein, and Provider wishes to provide such services to Customer, each on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. <u>Definitions</u>.

   "**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Hosted Services.

   "**Action**" has the meaning set forth in **Section 12**.

   "**Agreement**" has the meaning set forth in the preamble.

"**Active Users**" (if applicable) means each Authorized User who has used the Services or updated their user profile or other information associate with the Services, within the prior twelve (12) months during the Term.

"**Authorized Location**" (if applicable) means each office location or other physical address set forth in Customer's Service Order Form from which Authorized Users may use the Services pursuant to **Section 3.1** and the other terms and conditions of this Agreement.

"**Authorized Administrative User**" (if applicable) means each of the individual employees of Customer authorized to use the Services pursuant to **Section 3.1** and the other terms and conditions of this Agreement.

"**Authorized User**" means each of the: (i) Authorized Administrative Users; and (ii) End Users, who have been lawfully authorized to use the Services by Customer pursuant to **Section 3.1** and the other terms and conditions of this Agreement.

"**Authorized Territory**" (if applicable) means each state or other geographic territorial region set forth in Customer's Service Order Form in which Authorized Users may use the Services to sell or provide price quotes for insurance products pursuant to **Section 3.1** and the other terms and conditions of this Agreement.

"**Backup Policy**" has the meaning set forth in **Section 3.1**.

"**Confidential Information**" has the meaning set forth in **Section 9.1**.

"**Customer**" has the meaning set forth in the preamble.

"**Customer Data**" means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services.

"**Customer Failure**" has the meaning set forth in **Section 4.2**.

"**Customer Systems**" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

"**Disclosing Party**" has the meaning set forth in **Section 9.1**.

"**Documentation**" means any manuals, instructions or other documents or materials that the Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

"**Effective Date**" has the meaning set forth in the Service Order Form, or, if no date is specified, Effective Date shall be the first date Customer or its Authorized Users or End Users access FormFire software or services.

"**End User**" means each of the individuals to whom Customer provides access to the Services and authorizes to use the Services pursuant to **Section 3.1** and the other terms and conditions of this Agreement, including each employee of Customer's customers and prospective customers, to input information associated with themselves for the purpose of seeking insurance or other products or services that may be bid or sold through the Services.

"**Fee Tiers**" has the meaning set forth in **Section 7.2**.

"**Fees**" has the meaning set forth in **Section 7.1**.

"**Force Majeure Event**" has the meaning set forth in **Section 14.1**.

"**Harmful Code**" means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Services or Provider Systems as intended by this Agreement. Harmful Code does not include any Provider Disabling Device.

"**Hosted Services**" has the meaning set forth in **Section 2.1**.

"**Initial Term"** has the meaning set forth in **Section 10.1.**

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

"**Location Fee**" has the meaning set forth in **Section 7.2.**

"**Losses**" means 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 and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**Permitted Use**" means any use of the Services by an Authorized User for the benefit of Customer in connection with the quoting, sale and administration of insurance or other products

or services that may be bid or sold through the Services solely in or for Customer's internal business operations.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

"**Personal Information**" has the meaning set forth in **Section 6.2**.

"**Privacy Policy**" has the meaning set forth in **Section 6.2**.

"**Process**" means to take any action or perform any operation or set of operations that the SaaS Services are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. "**Processing**" and "**Processed**" have correlative meanings.

"**Protected Health Information**" or "**PHI**" means any and all information defined as protected health information under the Health Insurance Portability and Accountability Act ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and their accompanying regulations as promulgated from time to time and at 45 C.F.R. § 164.501.

"**Provider**" has the meaning set forth in the preamble.

"**Provider Disabling Device**" means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Provider or its designee to disable Customer's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Provider or its designee.

"**Provider Group**" has the meaning set forth in **Section 13.1**.

"**Provider Indemnitee**" has the meaning set forth in **Section 12**.

"**Provider Materials**" means the Service Software, Specifications, Documentation and Provider Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data or other content derived from Provider's monitoring of Customer's access to or use of the Services, but do not include Customer Data.

"**Provider Personnel**" means all individuals involved in the performance of Services as employees, agents or independent contractors of Provider or any Subcontractor.

"**Provider Systems**" means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third-party services.

"**Receiving Party**" has the meaning set forth in **Section 9.1**.

"**Reimbursable Expenses**" has the meaning set forth in **Section 7.3**.

"**Renewal Term"** has the meaning set forth in **Section 10.1.**

"**Representatives**" means, with respect to a party, that party's and its affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors and legal advisors.

"**Resultant Data**" means information, data and other content that is derived by or through the Services from Processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.

"**Scheduled Downtime**" has the meaning set forth in **Section 2.7**.

"**Service Allocation**" has the meaning set forth in **Section 3.4**.

"**Service Fee**" has the meaning set forth in **Section 7.2.**

"**Service Software**" means the Provider software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Provider provides remote access to and use of as part of the Services.

"**Services**" has the meaning set forth in **Section 2.1**.

"**Service Change**" has the meaning set forth in **Section 2.4**.

"**Specifications**" means the specifications for the Services set forth herein.

"**Subcontractor**" has the meaning set forth in **Section 2.5**.

"**Support Services**" has the meaning set forth in **Section 5**.

"**Term**" has the meaning set forth in **Section 10.1**.

"**Third-Party Materials**" means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider.

"User Terms" has the meaning set forth in **Section 3.1**.

2.   Services.

2.1   Services. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term, Provider shall use commercially reasonable efforts to provide to Customer and its Authorized Users the services described in the attached Customer's Service Order Form and this Agreement (collectively, the "**Services**") in accordance with the Specifications and terms and conditions hereof, including providing the Service Software for remote electronic access and use by Customer and its Authorized Users ("**Hosted Services**") in substantial conformity with the Specifications, except for during:

(a)   Scheduled Downtime in accordance with **Section 2.7**;

(b)   Service downtime or degradation due to a Force Majeure Event;

(c)   any other circumstances beyond Provider's reasonable control, including Customer's or any Authorized User's use of Third-Party Materials, misuse of the Hosted Services, or use of the Services other than in compliance with the express terms of this Agreement and the Specifications; and

(d)   any suspension or termination of Customer's or any Authorized Users' access to or use of the Hosted Services as permitted by this Agreement.

2.2   Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

(a)   Provider has and will retain sole control over the operation, provision, maintenance and management of the Services and Provider Materials, including the: (i) Provider Systems; (ii) selection, deployment, modification and replacement of the Service Software; and (iii) performance of Support Services and Service maintenance, upgrades, corrections and repairs; and

(b)   Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions or materials provided by any of them to the Services or Provider; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions or actions based on such use.

2.3   Service Management. The Customer shall, throughout the Term, maintain within its organization a service manager to serve as Customer's primary point of contact for day-to-day communications, consultation and decision-making regarding the Services. The Customer's service manager shall be responsible for providing all day-to-day consents and approvals on behalf of Customer under this Agreement. The Customer shall ensure its service manager has

the requisite organizational authority, skill, experience and other qualifications to perform in such capacity. The Customer shall use commercially reasonable efforts to maintain the same service manager in place throughout the Term. If the Customer's service manager ceases to be employed by Customer or Customer otherwise wishes to replace its service manager, Customer shall promptly name a new service manager by written notice to Provider. The Provider may require any Customer service manager to undergo training provided by the Provider regarding the use of the Services.

2.4 Changes. Provider reserves the right, in its sole discretion, to make any changes to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Provider's services to its customers, (ii) the competitive strength of or market for Provider's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes in a written agreement executed by Provider and Customer ("**Service Change**"). Notwithstanding anything to the contrary herein, including Section 7.3, Service Changes resulting in changes to the Services may result in Fee increases instituted by Provider in its sole discretion. A Service Change is not necessary for Customer to increase or decrease the number of Authorized Users, Authorized Locations, or Authorized Territories for any Services pursuant to **Section 3.4**.

2.5 Subcontractors. Provider may from time to time in its discretion engage third parties to perform Services (each, a "**Subcontractor**").

2.6 Suspension or Termination of Services. Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in sole discretion, that: (i) Customer or any Authorized User has failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This **Section 2.6** does not limit any of Provider's other rights or remedies, whether at law, in equity or under this Agreement.

2.7 Scheduled Downtime. Provider will use commercially reasonable efforts to give Customer at least twenty-four (24) hours' prior notice of all scheduled outages of the Hosted Services ("**Scheduled Downtime**").]

3. Authorization and Customer Restrictions.

3.1   Authorization. Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Provider may: (i) authorize Authorized Administrative Users to access the Services from the Authorized Location and use the Services to conduct business within the Authorized Territory, if any; and (ii) authorize End Users to access the Services within the Authorized Territory, if any; for the purpose of inputting information into the Services in connection with the quoting or sale of insurance or other products or services that may be bid or sold through the Services, by using an online authorization process established by Provider. Each of the Authorized Administrative Users and End Users is considered an Authorized User for the purpose of this Agreement. Authorized Administrative Users and End Users shall access and use the Services and Provider Materials solely for the Permitted Use by and through Authorized Users in accordance with the Specifications, the conditions and limitations set forth in this Agreement and the User Terms. The authorizations of Customer and its Authorized Users to access the Services are non-exclusive and non-transferable.

3.2   User Terms. It is a condition precedent to the access to and use of Services that each Authorized User shall accept Provider's updated Authorized User Terms ("**User Terms**") attached hereto as Customer's Service Order Form, as updated from time to time by Provider, and may be required to accept other policies associated with the Services.

3.3   Authorized Administrative Users. Authorized Administrative Users shall access the Services and such Provider Materials as Provider may supply or make available to Customer solely from the Authorized Location and use the Services and Provider Materials to provide cost quotes for insurance products and otherwise conduct business with Customer's customers and prospective customers that are located within the Authorized Territory during the Term. Provider, in its sole discretion, may grant certain Authorized Administrative Users the ability to perform certain administrative functions (e.g., the ability to review and/or edit information associated with End Users, the ability to create or run certain reports, etc.) in connection with Customer's access to and use of the Services. Such administrative functions may be revised, altered, suspended or revoked by Provider, in its sole discretion, at any time.

3.4   End Users. End Users shall access the Services and such Provider Materials as Provider may supply or make available to Customer and use the Services and Provider Materials solely within the Authorized Territory during the Term.

3.5   Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Provider Materials or Third-Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the Provider Materials and the Third-Party Materials are and will remain with Provider and the respective rights holders in the Third-Party Materials.

3.6   Authorization Limitations and Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license

agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not:

(a) copy, modify or create derivative works or improvements of the Services or Provider Materials;

(b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;

(c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials, in whole or in part;

(d) bypass or breach any security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;

(e) input, upload, transmit or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;

(f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Provider Systems or Provider's provision of services to any third party, in whole or in part;

(g) remove, delete, alter or obscure any trademarks, Specifications, Documentation, User Terms, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;

(h) access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Provider customer), or that violates any applicable Law;

(i) access or use the Services or Provider Materials in a fraudulent manner, intentionally input any inaccurate data into the Services, or make any misrepresentations in connection with the use of the Services;

(j) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage;

(k)   access or use the Services or Provider Materials in, or in association with, the design, construction, maintenance, operation of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage; or

(l)   otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under **Section 3.1**.

3.7   Service Allocation. Exhibit A sets forth a schedule of Fees, including tiered Service Fees associated with a specific number of Active Users, (the **"Service Allocation"**). Provider will notify Customer in writing once Customer has reached eighty (80) percent of its then current Service Allocation and Provider will subsequently notify Customer in writing once Customer has reached ninety (90) percent of its then current Service Allocation and Customer may increase its Service Allocation and corresponding Service Fee obligations in accordance with Exhibit A. If Customer exceeds its Service Allocation during the Initial Term or any Renewal Term, thereby triggering the applicability of a higher Fee Tier, the Service Fees associated with the higher Fee Tier shall be retroactively applied to the entirety of the then current Initial Term or Renewal Term period and Provider shall invoice Customer for the shortfall between the originally selected Fee Tier and the newly instituted higher Fee Tier. Customer acknowledges that exceeding its then-current Service Allocation may result in service degradation for Customer and other Provider customers and agrees that Provider has no obligation to permit Customer to exceed its then-current Service Allocation.

4.   Customer Obligations.

4.1   Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used; (b) provide Provider Personnel with such access to Customer's premises and Customer Systems as is necessary for Provider to perform the Services in accordance with the Availability Requirement and Specifications; and (c) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Agreement.

4.2   Effect of Customer Failure or Delay. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

4.3   Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by **Section 3.3**, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to

which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

5. Service Support. The Services consist of customer maintenance, technical support and training services ("**Support Services**"), as determined by Provider. Provider may amend the scope of support services from time to time in its sole discretion. Customer may purchase enhanced support services separately at Provider's then current rates.

6. Data Backup; Security.

    6.1 Data Backup. The Provider Systems are programmed to perform routine data backups as set out in Provider's backup policy in effect from time to time (the "**Backup Policy**"). In the event it becomes necessary, Provider will utilize the data backup to restore the Customer Data associated with the Services in accordance with the Backup Policy.

    6.2 Data Privacy. Provider shall use, handle, collect, maintain, and safeguard all personal information that does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located ("**Personal Information**") in accordance with the then current version of the Privacy Policy found on Provider's website at https://www.formfire.com/privacy ("**Privacy Policy**").

    6.3 Data Breach Procedures. Provider maintains a data breach plan in accordance with the criteria set forth in Provider's Privacy and Security Policy and shall implement the procedures required under such data breach plan on the occurrence of a "Data Breach" (as defined in such plan).

    6.4 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

    6.5 Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Hosted Services.

7. Fees; Payment Terms.

7.1   Fees. Customer shall pay Provider the fees set forth in Customer's Service Order associated with the Services and any Support Services provided hereunder ("**Fees**"), including any Service Fees, Location Fees and additional Fees associated with Support Services, in accordance with this **Section 7**.

7.2   Service Fee Tiers. Customer's Fees may include tiered Fees for use of the Services ("**Service Fees**") associated with pre-established tiers of Active Users ("**Fee Tiers**").

7.3   Location Fee. Customer's Fees may include a schedule of Fees associated with a specific number of Authorized Locations and/or Authorized Territories (the "**Location Fee**"), which is equal to the identified per location fee multiplied by the greater of the number of Authorized Locations or Authorized Territories (the "**Location Fee**").

7.4   Prepayment Discount: A 10% discount will be applied to the Fees for each Initial Term or subsequent Renewal Term if Customer prepays the Fees for such entire Initial Term or Renewal Term at the commencement date of such Initial Term or Renewal Term.

7.5   Fee Increases. Provider may increase the Fees for any Renewal Term, at Provider's discretion, by providing written notice to Customer at least 30 calendar days prior to the commencement of that Renewal Term, and Exhibit A will be deemed amended accordingly.

7.6   Reimbursable Expenses. Upon mutual agreement of the parties, Customer shall reimburse Provider for reasonable out-of-pocket expenses incurred by Provider in connection with performing the Services ("**Reimbursable Expenses**").

7.7   Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is 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 or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income. The preceding notwithstanding, Provider shall collect all such taxes from Customer and transmit to the proper authorities all taxes which Provider is required by law to collect from Customer in connection with this Agreement or the transactions contemplated by this Agreement.

7.8   Payment. Customer shall pay all Fees and Reimbursable Expenses within fifteen (15) days after the date of the invoice therefor. Customer shall make all payments hereunder in US dollars by credit card. Customer shall make payments to the address or account specified in Exhibit A or such other address or account as Provider may specify in writing from time to time.

7.9   Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

(a)   Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

(b)   Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and

(c)   if such failure continues for 60 days following written notice thereof, Provider may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

7.10   No Deductions or Setoffs. All amounts payable to Provider under this Agreement shall be paid by Customer to Provider in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

7.11   Audits.

(a)   Audit Procedure. Provider or its nominee (including its accountants and auditors) may, in Provider's sole discretion, inspect and audit Customer's use of the Services under this Agreement at any time during the Term. All audits will be conducted during regular business hours and in a manner that does not unreasonably interfere with Customer's business operations. Customer shall make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Provider with respect to such audit. Provider shall only examine information directly related to Customer's use of the Software.

(b)   Cost and Results of Audit. If the audit determines that Customer's use of the Services exceeded the usage permitted by this Agreement or otherwise violated the terms of this Agreement, Customer shall pay to Provider all amounts due for such excess use of the Software, plus all reasonable costs incurred by Provider in conducting the audit. If no excess usage or violation of this Agreement is found, Provider shall reimburse Customer for any reasonable costs incurred by Customer in cooperating with the audit. Provider reserves the right to disclose the results of the audits to third parties, including insurance providers and Provider's other business partners, if reasonably necessary, to protect or enforce Provider's rights or interests or in connection with the administration, management or facilitation of one of Provider's business relationships.

8.   Intellectual Property Rights.

8.1   Services and Provider Materials. All right, title and interest in and to the Services and Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and the respective rights holders in the Third-Party Materials. Customer has no right, license or authorization with respect to any of the Services or Provider Materials (including Third-Party Materials) except as expressly set forth in **Section 3.1** or the applicable third-party license, in each case subject to **Section 3.3.** All other rights in and to the Services and Provider Materials (including Third-Party Materials) are expressly reserved by Provider and the respective third-party licensors. In furtherance of the foregoing, Customer hereby

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unconditionally and irrevocably grants to Provider an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

8.2 Customer Data. As between Customer and Provider, and as permitted by applicable Law, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in **Section 8.3**, and to the extent such data is not defined as PHI, in which case such data remains the sole property of the individual providing the data. Notwithstanding anything to the contrary herein and for the avoidance of doubt, as permitted by applicable law, all PHI, Personal Information and other information directly associated with an End User remains the sole property of the End User and Provider reserves the right to retain such information in connection with the provisions of services to such End User, whether or not such services are provided to End User by or through Customer.

8.3 Consent to Use Customer Data, PHI and Personal Information. As permitted by applicable law, Customer and its Authorized Users hereby irrevocably grants all such rights and permissions in or relating to Customer Data, PHI and Personal Information: (a) to Provider, its Subcontractors and the Provider Personnel as are necessary or useful to perform the Services; and (b) to Provider as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.

9. Confidentiality.

9.1 Confidential Information. In connection with this Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to **Section 9.2**, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing: all Provider Materials are the Confidential Information of Provider and the financial terms and existence of this Agreement are the Confidential Information of each of the parties.

9.2 Exclusions. Confidential Information does not include information that: (a) was known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, to Receiving Party's reasonable knowledge, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

9.3   Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a)   not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b)   except as may be permitted by and subject to its compliance with **Section 9.4**, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this **Section 9.3**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **Section 9.3**;

(c)   safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and

(d)   ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 9**.

9.4   Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 9.3**; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 9.4**, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

9.5   Use of PHI. If, in the course of performing the Services hereunder, Provider obtains PHI, then Provider shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Provider on behalf of, Customer available to the Secretary of Health and Human Services or any other officer or employee of the Department of Health and Human Services to whom authority has been delegated for purposes of determining Customer's and Provider's compliance with HIPAA. A disclosure of an individual's or beneficiary's PHI to that individual or beneficiary and upon that individual or beneficiary's request is considered a permitted disclosure for purposes of this section.

9.6   Certain Audit Results. Notwithstanding any other terms of this Agreement, including **Sections 9.1** through **9.5**, Customer acknowledges and agrees that Provider, in its reasonable discretion, may share certain audit results from audits conducted in accordance with **Section**

7.11 regarding Customer's use of the Services with insurance companies for which Customer is providing health insurance broker services and consents to such sharing.

10. Term and Termination.

    10.1 <u>Term</u>. The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect until one (1) calendar year from such date (the "**Initial Term**"). This Agreement will automatically renew for additional successive one (1) year term[s] unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

    10.2 <u>Termination</u>. In addition to any other express termination right set forth elsewhere in this Agreement:

        (a)   Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; (including email notice) or (ii) breaches any of its obligations under **Section 3.3** (Use Limitations and Restrictions) or **Section 9** (Confidentiality).

        (b)   either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and

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

    10.3 <u>Effect of Expiration or Termination</u>. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

        (a)   all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;

(b)   Provider shall immediately cease all use of any Customer Data or Customer's Confidential Information and (i) destroy all documents and tangible materials containing, reflecting, incorporating or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Provider directly or indirectly controls, provided, however, that, for the sake clarity, Provider's obligations under this **Section 10.3(b)** do not apply to any Resultant Data. Notwithstanding anything to the contrary herein and for the avoidance of doubt, subject to any applicable law, all PHI, Personal Information and other information directly associated with an End User remains the sole property of the End User and Provider reserves the right to retain such information in connection with the provisions of services to such End User, whether or not such services are provided to End User by or through Customer;

(c)   Customer shall immediately cease all use of any Services or Provider Materials and (i) promptly destroy all documents and tangible materials containing, reflecting, incorporating or based on any Provider Materials or Provider's Confidential Information; and (ii) permanently erase all Provider Materials and Provider's Confidential Information from all systems Customer directly or indirectly controls;

(d)   notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; (ii) Provider may retain Customer Data; (iii) Customer may retain Provider Materials, in the case of each of sub-clause (i), (ii) and (iii) in its then current state and solely to the extent and for so long as required by applicable Law; (iv) Provider may also retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (v) all information and materials described in this **Section 10.3(d)** will remain subject to all confidentiality, security and other applicable requirements of this Agreement;

(e)   Provider may disable all Customer and Authorized User access to the Hosted Services and Provider Materials;

(f)   if Customer terminates this Agreement pursuant to **Section 10.2(b)**, Provider will refund to Customer any Fees paid in advance for Services that Provider has not performed as of the effective date of termination; and

(g)   if Provider terminates this Agreement for any reason, including pursuant to **Section 10.2(a)**, **Section 10.2(b)**, or **Section 10.2(c)**, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but unpaid Fees and Reimbursable Expenses, immediately on receipt of Provider's invoice therefor.

10.4 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 3.3** , **Section 9**, **Section 10.3**, this **Section 10.4**, **Section 11**, **Section 12**, **Section 13** and **Section 15**.

11. Representations and Warranties.

    11.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

        (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

        (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement;

        (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

        (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

    11.2 Additional Provider Representations, Warranties and Covenants. Provider represents, warrants and covenants to Customer that:

        (a) Provider will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement; and

        (b) Provider, in performing its obligations under this Agreement, will comply with applicable laws and regulations with regard to PHI, including, but not limited, to HIPAA and HITECH, with regard to information uploaded or entered into the Services by Customer or any Authorized Users (including by entering into Business Associate Agreements ("BAAs") or similar subcontractor arrangements as required by HIPAA).

    11.3 Additional Customer Representations, Warranties and Covenants. Customer represents, warrants and covenants to Provider that:

        (a) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law; and

        (b) Customer is in compliance with applicable laws and regulations with regard to all PHI, including HIPAA and HITECH, with regard to information uploaded or entered into the Services by Customer or any Authorized Users. Customer shall enter into a BAA with any customers of Customer to the extent necessary to assure the protection of PHI as required by

HIPAA, HITECH, and any applicable BAA in effect. Customer will enter into a BAA with Provider, in the form attached hereto to as Exhibit B, as required by applicable law.

11.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 11.1 AND 11.2, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE; PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

12. Customer Indemnification. Customer shall indemnify, defend and hold harmless Provider, its Subcontractors and affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "**Provider Indemnitee**") from and against any and all Losses incurred by such Provider Indemnitee arising out of or relating to any claim, suit, action or proceeding (each, an "**Action**") by a third party (other than an affiliate of a Provider Indemnitee) to the extent that such Losses arise out of or relate to any:

(a) Customer Data, including any Processing of Customer Data by or on behalf of Provider in accordance with this Agreement;

(b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, including Provider's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User;

(c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement, including any unauthorized use of the Service by Customer or any Authorized User; or

(d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

13. Limitations of Liability.

4/3/18

13.1   <u>EXCLUSION OF DAMAGES</u>. PROVIDER, PROVIDER AFFILIATES, AND ITS AND THEIR RESPECTIVE SUBCONTRACTORS, VENDORS, DIRECTORS, OFFICERS AND EMPLOYEES (COLLECTIVELY, THE "**PROVIDER GROUP**") SHALL NOT BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT, ITS SUBJECT MATTER, OR IN ANY COLLATERAL TRANSACTION FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES.

13.2   <u>CAP ON MONETARY LIABILITY</u>. PROVIDER GROUP'S CUMULATIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT, ITS SUBJECT MATTER, OR IN ANY COLLATERAL TRANSACTION SHALL NOT EXCEED THE AMOUNT PAID TO PROVIDER IN THE PREVIOUS TWELVE (12) MONTHS FOR THE SPECIFIC SERVICES GIVING RISE TO THE ACTION.

13.3   SECTIONS 13.1 AND 13.2 SHALL APPLY NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ANY PURCHASE ORDER, ORDER ACKNOWLEDGMENT OR OTHERWISE AND REGARDLESS OF WHETHER LOSSES, LIABILITY OR REMEDIES ARISE IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT) STRICT LIABILITY, PRODUCTS LIABILITY, PROFESSIONAL LIABILITY, INDEMNITY, CONTRIBUTION, STATUTE OR OTHERWISE, REGARDLESS OF WHETHER SUCH LOSSES WERE FORESEEABLE AND WHETHER OR NOT PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.   <u>Force Majeure</u>.

14.1   <u>No Breach or Default</u>. In no event will either party 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 of their duties or obligations under this Agreement (excluding Customer's payment obligations), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of 30 days or more.

14.2   <u>Affected Party Obligations</u>. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15. <u>Miscellaneous</u>.

15.1 <u>Further Assurances</u>. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

15.2 <u>Relationship of the Parties</u>. The relationship between the parties is that of independent contractors. 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.

15.3 <u>Public Announcements</u>. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Provider may, without Customer's consent, include Customer's name and/or other indicia in its lists of Provider's current or former customers of Provider in promotional and marketing materials.

15.4 <u>Notices</u>. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this **Section 15.4**):

- If to Customer, to the contact mailing address provided on any Service Order Form; or to the electronic mail address provided on any Service Order Form

- If to Provider:

    FormFire, LLC
    1100 Superior Ave, Suite 1650
    Cleveland, OH 44114
    Attention: Legal Department
    E-mail: legal@formfire.com

Notices sent in accordance with this **Section 15.4** will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by e-mail, if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.5 <u>Interpretation</u>. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not

exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

15.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

15.7 Entire Agreement. This Agreement, together with its Schedules and Exhibits, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments and appendices and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its exhibits, schedules, attachments and appendices; (b) second, the exhibits, schedules, attachments and appendices to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

15.8 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Provider's prior written consent, which consent Provider shall not unreasonably withhold or delay. A change of control of the Customer will constitute an assignment for the purposes of this Agreement. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this **Section 15.8** is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

15.9 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

15.10 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of

any of the provisions hereof 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 rights, 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.

15.11 <u>Severability</u>. If any provision of this Agreement is 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 such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.12 <u>Governing Law; Submission to Jurisdiction</u>. This Agreement is governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Ohio. Any legal suit, action or proceeding arising out of or related to this Agreement, its subject matter or any collateral transaction shall be instituted exclusively in the federal courts of the United States or the courts of the State of Ohio in each case located in the city of Cleveland and County of Cuyahoga, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

15.13 <u>Equitable Relief</u>. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under **Section 9** or, in the case of Customer, **Section 3.3** or **Section 4.3**, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

EXHIBIT A

AUTHORIZED USER TERMS

These Authorized User Terms ("**User Terms**") govern your use of this software and any other web-based services provided to you by FormFire (the "**Service**"), including all user manuals, technical manuals, and any other materials provided by FormFire, in printed, electronic, or other form, that describe the Service or its use or specifications or otherwise relate to the Service (the "**Documentation**") provided to you ("**you**" or "**your**") for use pursuant to and subject to a software license agreement (the "**Software as a Service Agreement**") between FormFire LLC ("**FormFire**") and your employer or other person or entity who has lawfully granted you access to the Service ("**Licensee**").

FORMFIRE PROVIDES THE SERVICE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THESE USER TERMS AND ON THE CONDITION THAT YOU ACCEPT AND COMPLY WITH THEM. BY CLICKING THE "ACCEPT" BUTTON YOU: (i) REPRESENT THAT YOU ARE DULY AUTHORIZED BY LICENSEE TO ACCESS AND USE THE SERVICE; AND (ii) ACCEPT THESE USER TERMS AND AGREE THAT YOU ARE LEGALLY BOUND BY THEM. IF YOU DO NOT AGREE TO THESE USER TERMS, DO NOT CLICK THE "ACCEPT" BUTTON AND YOU WILL HAVE NO LICENSE TO, AND MUST NOT ACCESS OR USE, THE SERVICE.

1.   License Grant. Subject to your strict compliance with these User Terms, and your authorization to access and use the Service pursuant to the Software as a Service Agreement, FormFire hereby grants you a non-exclusive, non-transferable, non-sublicensable, limited, personal license to access and use the Service solely in accordance with the Documentation provided by Licensee and for Licensee's internal business purposes. The foregoing license will terminate immediately on the earlier to occur of:

   a) the expiration or earlier termination of the Software as a Service Agreement between FormFire and Licensee; or

   b) your ceasing to be authorized by Licensee to use the Service for any or no reason.

2.   Use Restrictions. You shall not, directly or indirectly:

   a) copy, modify or create derivative works or improvements of the Service or Documentation or any part thereof;

   b) combine the Service or any part thereof with, or incorporate the Service or any part thereof in, any other programs;

   c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise provide any access to or use of the Service or any features or functionality of the Service, for any reason, to any other person or entity, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, whether or not over a network and whether or not on a hosted basis;

   d) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Service or Documentation, in whole or in part;

   e) bypass or breach any security device or protection used by the Service or Documentation or access or use the Service or Documentation other than by an Authorized User through the use of his or her own then valid Access Credentials;

   f) input, upload, transmit or otherwise provide to or through the Service or FormFire's systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful software code;

g) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Service, FormFire's systems or FormFire's provision of services to any third party, in whole or in part;

h) remove, delete, alter or obscure any trademarks, Specifications, Documentation, User Terms, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Service or Documentation, including any copy thereof;

i) access or use the Service or Documentation in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of any confidential data of FormFire), or that violates any applicable law, regulation, or rule or third-party privacy rights;

j) access or use the Service or Documentation in a fraudulent manner, intentionally input any inaccurate data into the Service, or make any misrepresentations in connection with the use of the Service;

k) access or use the Service or Documentation for purposes of competitive analysis of the Service or Documentation, the development, provision or use of a competing software service or product or any other purpose that is to the FormFire's detriment or commercial disadvantage;

l) access or use the Service or Documentation in any use or application in which the use or failure of the Service could lead to personal injury or physical or property damage;

m) interfere with or disrupt the integrity or performance of the Service or attempt to gain unauthorized access to the Service or FormFire's systems or networks; or

n) otherwise access or use the Service or Documentation beyond the scope of the authorization granted under Section 1.

3. **User Account.**

a) FormFire shall provide you with access to the Service through a user account ("User Account"). If Your User Account is associated with an account associated with Licensee ("Licensee Account"), it may be subject to additional terms and conditions that govern the License Account.

b) FormFire may suspend or terminate your User Account at any time, upon any violation of the terms of these User Terms, including the failure by you or Licensee to make the payments associated with your User Account. Upon full or partial termination or suspension of your User Account, FormFire may revoke or restrict your ccess to the Service, suspend transmission of data to or from you, in addition to any other legal or technical remedy available to FormFire, with or without prior notice to you.

4. **Compliance Measures.** The Service may contain technological copy protection or other security features designed to prevent unauthorized use of the Service, including features to protect against use of the Service: (i) beyond the scope of the license granted to pursuant to Section 1; or (ii) prohibited under Section 2. You shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features. You agree to promptly report any unauthorized use of the Service to FormFire.

5. **Collection and Use of Information.**

a) You are responsible for the accuracy, quality, integrity and legality of any data you input into the Service. You warrant and represent that you are fully and duly authorized to submit any data you input into the Service. If you are inputting third-party data, you

agree to provide written evidence of all authorizations upon request by FormFire. You acknowledge that FormFire is not responsible for the accuracy or completeness of any data you input into the Service, and you agree to indemnify and defend FormFire from any claim, liability, loss, or damages arising from any claim arising in connection with any error or misuse associated with data you input into the Service.

b) **Data Privacy**. FormFire shall use, handle, collect, maintain, and safeguard all personal information that does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located ("**Personal Information**") in accordance with the then current version of the Privacy Policy found on FormFire's website at https://www.formfire.com/privacy, as such policy may be updated or amended from time to time ("**Privacy Policy**"). The Privacy Policy is hereby incorporated into and made a part of these User Terms.

c) In addition to the Personal Information gathered by FormFire through the Service, FormFire may, directly or indirectly, collect and store information regarding use of the Service and about equipment on which the Service is accessed and used, by means of (i) providing maintenance and support services and (ii) security measures included in the Service as described in Section 4. You agree that the FormFire may use such information for any purpose related to any use of the Service by you, including but not limited to: (i) improving the performance of the Service or developing updates; and verifying compliance with the terms of these User Terms and enforcing FormFire's rights, including all intellectual property rights in and to the Service and Documentation.

6. **Intellectual Property Rights.** You acknowledge that the Service and Documentation is provided to you under license, and not sold, to you. You do not acquire any ownership interest in the Service or Documentation under these User Terms, or any other rights to the Service or Documentation other than to use the Service and Documentation in accordance with the license granted under these User Terms, subject to all terms, conditions, and restrictions of these User Terms and the Software as a Service Agreement. FormFire reserves and shall retain its entire right, title, and interest in and to the Service and Documentation and all intellectual property rights arising out of or relating to the Service (and all trademarks and logos reproduced through the Service), subject to the license expressly granted you in these User Terms. You shall safeguard all Service from infringement, misappropriation, theft, misuse, or unauthorized access.

7. **WARRANTY DISCLAIMER. THE SERVICE AND DOCUMENTATION ARE PROVIDED TO YOU "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, FORMFIRE, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, FORMFIRE PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.**

8. **Indemnification.** You agree defend FormFire against any claim made or brought against FormFire by a third party alleging that data you input into the Service or your use of the Service in violation of this Agreement infringes or misappropriates the intellectual property rights of a third party, or violates applicable law; and you further agree to indemnify FormFire for any liability or loss arising from any such claim, including reasonable attorney's fees.

9. **Disclaimer of Liability.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW: IN NO EVENT WILL FORMFIRE OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO YOU FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SERVICE. YOU ARE PROVIDED THE SERVICE PURSUANT TO THE SOFTWARE AS A SERVICE AGREEMENT BETWEEN FORMFIRE AND LICENSEE, SOLELY FOR THE BENEFIT OF LICENSEE AND AT LICENSEE'S DISCRETION. YOU ACKNOWLEDGE THAT YOU HAVE NO RIGHTS UNDER THAT AGREEMENT INCLUDING ANY RIGHTS TO ENFORCE ANY OF ITS TERMS. ANY OBLIGATION OR LIABILITY FORMFIRE OR ITS AFFILIATES, OR ANY OF ITS OR THEIR LICENSORS OR SERVICE PROVIDERS, MAY HAVE WITH RESPECT TO YOUR USE OR INABILITY TO USE THE SERVICE SHALL BE SOLELY TO LICENSEE PURSUANT TO THAT AGREEMENT AND SUBJECT TO ALL LIMITATIONS OF LIABILITY SET FORTH THEREIN. IN ANY EVENT, EXCEPT FOR YOUR INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES. THE LIABILITIES LIMITED BY THIS SECTION 9 APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; AND APPLY EVEN IF FORMFIRE HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION, AND EVEN IF SUCH DAMAGES WERE FORESEEABLE. IF THIS LIMITATION OF LIABILITY CONFLICTS IN ANY WAY WITH APPLICABLE LAW, FORMFIRE'S LIABILITY WILL BE LIMITED TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.

10. **Export Regulation.** The Service may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Service to, or make the Service or Documentation accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Service available outside the US.

11. **Governing Law.** These User Terms are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Ohio. Any legal suit, action, or proceeding arising out of or relating to these User Terms shall be instituted in the federal or state courts located in Cleveland, Ohio, and you irrevocably consent and submit to the exclusive jurisdiction of such courts.

12. **Miscellaneous.**

   a) **Amendment**. FormFire may amend these User Terms (including any online policy referenced herein, including the Privacy Policy) from time to time. You will receive the amended terms upon your next login, and may be required to read and accept the amended User Terms before accessing or using the Service.

   b) **Independent Contractors**. Nothing in these User Terms shall be construed to create a partnership or any agency or employee relationship between you and FormFire. Neither party is the employee or agent of the other and neither may bind the other in any way.

c) **No Assignment**. These User Terms are personal to you and these User Terms, and the rights and obligations hereunder, may not be assigned or otherwise transferred by you to anyone.

d) **Severability**. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of these User Terms invalid or otherwise unenforceable in any respect. In the event that a provision of these User Terms is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of these User Terms will continue in full force and effect.

e) **Conflicts**. In the event of any conflict between these User Terms and those of the Privacy Policy or any other policies or agreements referenced herein, the terms of these User Terms will govern.

13.   BINDING INTENT. BY ACCEPTING THESE USER TERMS AND ACCESSING THE SERVICE, YOU AGREE TO BE BOUND BY THESE USER TERMS, ON BEHALF OF YOURSELF, ANY ASSOCIATED COMPANY, AND ANY SUCCESSOR IN INTEREST.

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA"), effective _____[Date], or the date of last signature below if the foregoing space is blank (the "Effective Date"), is entered into by and between _____[Customer Legal Name] ("BA"), and **FormFire, LLC**, an Ohio limited liability company ("Sub-BA") (each a "Party," and collectively the "Parties").

RECITALS

WHEREAS, BA and Sub-BA are engaged in a business relationship whereby BA performs services for HIPAA Covered Entities, and Sub-BA sells to, provides, or performs on behalf of BA, certain management and administrative services ("Business Relationship");

WHEREAS, as part of this Business Relationship, Sub-BA performs or assists in performing a function or activity on behalf of BA that involves the use and/or disclosure of Protected Health Information (as defined in 45 C.F.R. 160.103).

WHEREAS, the Parties desire to enter into this BAA regarding the use and/or disclosure of Protected Health Information as required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") and the Standards for Security of Electronic Protected Health Information (the "Security Rule") promulgated thereunder, and the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII and Division B, Title IV, of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) (the "HITECH Act"), and the regulations implementing the HITECH Act.

NOW, THEREFORE, for and in consideration of the representations, warranties and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. <u>Terms Used</u>. Terms used but not otherwise defined in this BAA shall have the same meaning given to such terms in HIPAA, the HITECH Act, or any implementing regulations promulgated thereunder, including but not limited to the Privacy Rule and the Security Rule. For the avoidance of doubt, the term Protected Health Information ("PHI") shall include Electronic Protected Health Information.

2. <u>Permitted Uses and Disclosures of PHI</u>. Except as otherwise limited in the Business Relationship or this BAA, Sub-BA may use and/or disclose PHI to perform the functions, activities, or services for or on behalf of BA as specified in the Business Relationship provided that such use and/or disclosure (a) would not violate the Privacy Rule or Security Rule if done

by BA, (b) is reasonably limited to the minimum necessary information to accomplish the intended purpose of the use or disclosure, (c) is in compliance with each applicable requirement of 45 C.F.R. § 164.504(e), and (d) is in compliance with the HITECH Act and its implementing regulations. All other uses and/or disclosures not authorized by the Business Relationship or this BAA are prohibited.

3. <u>Responsibilities of Sub-BA with Respect to PHI</u>. With regard to the use and/or disclosure of PHI, Sub-BA hereby agrees:

(a) not to use and/or disclose PHI other than as permitted or required by the Business Relationship or this BAA or as Required By Law;

(b) to use appropriate safeguards to prevent the use and/or disclosure of PHI other than as provided for by the Business Relationship or this BAA;

(c) to comply with the Security Rule provisions set forth in 45 C.F.R. Part 164, Subpart C and to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI which Sub-BA creates, receives, maintains, or transmits on behalf of BA;

(d) to promptly report to BA any Security Incident or potential Breach of Unsecured PHI of which Sub-BA becomes aware;

(e) within seven (7) business days of reporting the potential Breach of Unsecured PHI, provide a report that shall include the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Sub-BA to have been, accessed, acquired, used or disclosed during any such potential Breach, together with such other information regarding the potential Breach as is known to Sub-BA at the time such report is made (such as the type of PHI involved in the event, the nature of the information accessed, acquired or disclosed, etc.) or as promptly thereafter as such other information becomes available;

(f) to notify BA in writing within seven (7) business days of any use and/or disclosure of PHI that is not provided for by the Business Relationship or this BAA;

(g) to mitigate, to the extent practicable, and its sole cost and expense, any harmful effect that is known to Sub-BA of a use or disclosure of PHI by Sub-BA in violation of the requirements of this BAA or as the result of any Security Incident or potential Breach.

(h) to work cooperatively with BA in connection with BA's investigation of any potential Breach and in connection with any notices BA determines are required as a result, and to refrain from giving any notice itself unless BA expressly agrees in advance and in writing to Sub-BA giving notice and to the form, content and method of delivery of such notice, all at the sole cost and expense of Sub-BA;

(i) to ensure that all subcontractors and agents that create, receive, maintain or transmit PHI on behalf of Sub-BA agree in writing to substantially the same restrictions and conditions that apply to Sub-BA with respect to such PHI and to enter into a written business associate agreement with such subcontractors in accordance with HIPAA and to provide copies of written business associate agreements with such subcontractors upon request of BA;

(j)   to provide access (at the request of, and in the time and manner reasonably designated by, BA) to PHI in a Designated Record Set to BA or, as directed by BA, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524 (this provision shall be applicable only if Sub-BA has PHI in a Designated Record Set) and to notify BA of any requests for access it receives from an Individual;

(k)   to make any amendment(s) to PHI in a Designated Record Set that BA directs pursuant to 45 C.F.R. § 164.526 (this provision shall be applicable only if Sub-BA has PHI in a Designated Record Set) and to notify BA of any amendment requests it receives from an Individual;

(l)   to document such disclosures of PHI and information related to such disclosures as would be required for BA to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528;

(m)   to provide to BA, within thirty (30) days of BA's request or such shorter time period required by state or federal law, information collected in accordance with Section 3(l) of this BAA, to permit BA to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 (and HITECH Act § 13405(c) when such requirements are effective as to BA);

(n)   to the extent Sub-BA is to carry out an obligation of BA under the Privacy Rule provisions set forth at 45 C.F.R. Part 164, Subpart E (any such obligation to be carried out only when so directed by BA pursuant to the Business Relationship or this BAA), to comply with the requirements of the Privacy Rule that apply to BA in the performance of such obligation;

(o)   to make its internal practices, books, and records relating to the use and/or disclosure of PHI received from, or created or received by Sub-BA on behalf of BA, available to BA, or at the request of BA, to the Secretary of the Department of Health and Human Services or his/her designee for purposes of determining BA's and/or Sub-BA's compliance with the Privacy Rule and/or Security Rule; and

(p)   if Sub-BA knows of a pattern of activity or practice by its subcontractor or agent that constitutes a material breach or violation of Sub-BA's obligations under this BAA or of the agreement described in Section 3(h) of this BAA, (i) to give written notice of such pattern or practice to BA promptly of its discovery; (ii) to take reasonable steps to cure the breach or end the violation; and (iii) if Sub-BA determines that such steps appear to have been unsuccessful, to promptly terminate the subcontractor's or agent's creation, receipt, maintenance, or transmittal of PHI on behalf of Sub-BA and to give BA written notice of such determination and termination.

4. Responsibilities of BA with Respect to PHI. If deemed applicable by BA, BA shall:

(a)   provide sub-BA with BA's notice of privacy practices as well as any changes to such notice;

(b)   notify Sub-BA in writing of any change in, or revocation of, permission by Individual to the use and/or disclosure of PHI, if such changes affect sub-BA's permitted or required uses and/or disclosures; and

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(c)   notify Sub-BA in writing of any restriction to the use and/or disclosure of PHI that BA has agreed to in accordance with 45 C.F.R. 164.522.

5. Specific Use and Disclosure by Sub-BA. Except as otherwise limited in the Business Relationship and this BAA, Sub-BA may:

(a)   use PHI for the proper management and administration of Sub-BA or to carry out the legal responsibilities of Sub-BA;

(b)   disclose PHI for the proper management and administration of Sub-BA, provided that the disclosures are Required By Law, or Sub-BA obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Sub-BA of any instances of which it is aware in which the confidentiality of PHI has been breached;

(c)   use PHI to provide Data Aggregation services to BA as permitted by 42 C.F.R. 164.504(e)(2)(i)(B); and

(d)   to use aggregated, de-identified data to improve the functionality of Sub-BA's software and services.

6. Term and Termination.

(a) Term. The Term of this BAA shall be effective as of the Effective Date and shall terminate when all of the PHI provided by BA to Sub-BA, or created or received by Sub-BA on behalf of BA, is destroyed or returned to BA, or, if it is infeasible to return or destroy PHI, protections are extended to such PHI, in accordance with Section 6(c) below.

(b) Termination for Cause. BA may immediately terminate the Business Relationship and/or this BAA if BA determines that sub-BA has breached a material term of this BAA upon thirty (30) days' written notice following BA's determination that Sub-BA breached a material term of this BAA, provided that such termination shall not be effective if Sub-BA cures such breach within the thirty (30) day notice period.

(c) Effect of Termination.

i.   Except as provided in paragraphs (ii) and (iii) of this Section 6(c), upon termination of the Business Relationship and/or this BAA, for any reason, Sub-BA shall return or destroy all PHI received from BA, or created or received by Sub-BA on behalf of BA. This Section 6(c)(i) shall apply to PHI that is in the possession of subcontractors or agents of Sub-BA.

ii.   Sub-BA may use or disclose PHI for its own management or administration, or to carry out Sub-BA's legal responsibilities after termination of the Business Relationship and/or this BAA.

iii. In the event that Sub-BA determines that returning or destroying the PHI is infeasible, Sub-BA shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Sub-BA maintains such PHI.

7. Miscellaneous.

(a) Application and Incorporation. As of the Effective Date, this BAA supersedes any preexisting business associate agreement between the parties and automatically amends any preexisting contract or relationship — written or unwritten, formal or informal — between Sub-BA and BA, and this BAA does and will apply to, and be deemed incorporated into, all present and future contracts and relationships — written or unwritten, formal or informal — between Sub-BA (including its officers, directors, employees, independent contractors, and agents) and BA regardless of any specific reference to this BAA or lack thereof.

(b) Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for BA and Sub-BA to comply with the requirements of the Privacy Rule, the Security Rule, HIPAA, the HITECH Act and its implementing regulations. No amendment to this BAA shall be effective unless it is in writing and signed on behalf of BA and Sub-BA.

(c) Survival. The respective rights and obligations of Sub-BA under Section 6(c) of this BAA shall survive the termination of the Business Relationship and/or this BAA. Section 7 shall also survive the termination of the Business Relationship and/or this BAA.

(d) Regulatory and Statutory References. Any reference in this BAA to a section of HIPAA, the Privacy Rule, the Security Rule, the HITECH Act, or any other regulations implementing HIPAA or the HITECH Act, shall mean such regulation or statute as in effect at the time of execution of this BAA or, if and to the extent applicable, as subsequently updated, amended or revised.

(e) No Third-Party Beneficiary. Nothing in this BAA is intended, nor shall be deemed, to confer any benefits on any third party.

(f) Notices. Notwithstanding anything to the contrary in any document describing the Business Relationship, notices under this BAA shall be sufficient only if in writing and personally delivered, delivered by a major commercial rapid delivery courier service, or mailed by certified or registered mail, postage prepaid and return receipt requested, to a party at the address set forth below or as amended by notice pursuant to this subsection.

> If to BA:
> > Chief Privacy Officer
> > _____[Customer Street Address]
> > _____[Customer State, City, ZIP]

> If to Sub-BA:
> > Chief Privacy Officer
> > FormFire, LLC
> > 1100 Superior Ave., Suite 1650
> > Cleveland, OH 44114

With a copy to:
Information Technology Manager
FormFire, LLC
1100 Superior Ave, Suite 1650
Cleveland, OH 44114

(g)   Effect of BAA.   Except as amended by this BAA, the terms and provisions of the Business Relationship shall remain in full force and effect.

(h)   Assignment.   This BAA may not be transferred or assigned by either party without the prior written consent of the other party. Any assignment in violation of this provision is void and without effect. In the case of any permitted assignment or transfer of or under this BAA, this BAA or the relevant provisions shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties hereto.

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned have executed this Business Associate Agreement as of the Effective Date.

BUSINESS ASSOCIATE:

x_____

By: _____

Printed Name: _____

Title: _____

Date: _____

SUB-BUSINESS ASSOCIATE:

x_____

FORMFIRE, LLC

By: _____

Printed Name: _____

Title: _____

Date: _____