

Access License

FormFox, Inc. ("FormFox") hereby grants the company identified above (on its own behalf and on behalf of its affiliates, and their respective employees, agents and representatives, collectively referred to herein as "You", "Your", or "Company") licensed access to certain FormFox software services, as set forth and defined herein.

1. Definitions.

Term	Definition
<i>Abuse</i>	Shall be deemed to have occurred if, in Company's access and use of the Service (i) Company builds applications that interact with, or combine applications with, the Service which applications negatively affect the speed and performance of the Service, (ii) Company create dynamic pages which (a) take longer than 5 seconds to resolve, or (b) take longer than 8 seconds to load, or (iii) Company reach ten percent (10%) or more of the annual web request subscription allowance set forth in the SOW within a 24-hour period. If Abuse occurs, FormFox shall, in addition to and not exclusive of any other remedies at law or in equity, have the right to audit and require Company to take immediate corrective actions.
<i>Available</i>	means when a User has reasonable access to the system, excluding Emergency Maintenance & Preventative Maintenance windows. Availability does not extend to Third Party Applications.
<i>Basic Support</i>	Means the Basic Support provided at https://www.formfox.com/?page_id=5654
<i>Confidential Information</i>	means (i) all nonpublic information concerning the business, technology, products, services and strategies of the Discloser, specifically including any FormFox intellectual property, concepts, methodologies, inventions, developments or procedures provided by FormFox to Company, and specifically including Customer Data; (ii) all information clearly labeled by the Discloser in writing as "confidential", and (iii) all information that, by its nature, a reasonable party would consider to be confidential or proprietary. Recipient shall keep in confidence and trust and will not disclose, disseminate or use, or permit any employee, agent or other person working under Recipient's direction to disclose, disseminate or use, the existence, source, content or substance of any Confidential Information to any other person or for any purpose other than those set forth in this MSA. The following information will not be considered Confidential Information: (a) information which was in the public domain prior to its disclosure; (b) information which becomes part of the public domain by any means other than through violation of this MSA; (c) information independently developed by the Recipient without reference to the Disclosing Party's Confidential Information, or (d) information rightfully provided to the Recipient from a third party without restriction. Further, each party agrees that it shall disclose the Disclosing Party's Confidential Information only to such of its Representatives (as defined below) and/or employees who have a need to know such information for the furtherance of this MSA. The Recipient may disclose Confidential Information as required by law or in compliance with any court or administrative order; provided that Recipient gives the Discloser reasonable notice as permitted by law that such Confidential Information is being sought by a third party in order to afford the Discloser the opportunity to limit or prevent such disclosure.
<i>Customer Data</i>	Means all electronic data or information submitted thru the Services pertaining to an individual/donor.
<i>Company Infringement</i>	means (i) any change, or enhancement in the Services made by Company or any third party on behalf of Company other than at the direction of, or as approved by, FormFox, (ii) Company's use of the Services except as contemplated by this MSA.
<i>Services</i>	means the services selected in the applicable SOW (including Basic Support and SLA provisions)
<i>SLA</i>	means the Service Level Agreement provided at https://www.formfox.com/?page_id=5649
<i>SOW</i>	Statement of Work/Order Form
<i>Third-Party Services</i>	Services, including but not limited to online, web-based applications and offline software products, lab testing, MRO reviews, and specimen collections provided by third parties
<i>Users</i>	Individuals who are authorized by Company to use the Services and who have been supplied user identifications and passwords by Company (or by FormFox at Company's request).

2. Termination.

- (i) Either party, for any reason or no reason, may terminate this service by ninety (90) day prior written notice to the other party.

3. Company Responsibilities.

- (i) User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.
- (ii) Company shall (a) be responsible for Users' compliance with this MSA, (b) be solely responsible for the accuracy, quality, integrity and legality of Customer Data and of the means by which Company acquired Customer Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify FormFox promptly of any such unauthorized access or use, and (d) use the Services only in accordance with FormFox training and instructions and applicable law.
- (iii) Company shall not: (i) permit any third party, other than authorized Users, to access the Services except as permitted herein or in an SOW, (ii) sell, resell, rent or lease the Services, (iii) create derivative works based on the Services, (iv) use the Services to store or transmit: infringing, libelous, or otherwise unlawful or tortious material; malicious code; material in violation of third-party privacy rights (v) copy, frame or mirror any part or content of the Services (other than copying or framing Company's own intranets or otherwise for Company's own internal business purposes), (vi) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein (vii) attempt to gain unauthorized access to the Services or their related systems or networks, (viii) access the Services in order to: build a competitive product or service, copy any features, functions or graphics of the Services, reverse engineer the Services, (ix) Abuse the Services.
- (iv) Services may be subject to other limitations, such as: limited storage space, number of calls Company is permitted against the application programming interface, and for Services enabling Company to provide public websites the number of page views by visitors to those websites. Any such limitations are specified in the applicable SOW. The Services may provide real-time information to enable Company to monitor Company's compliance with such limitations.

4. Third-Party Providers

FormFox may offer Third-Party Services for sale under separate statements of work. Any other acquisition by Company of third-party products or services, including but not limited to Third-Party applications and implementation, customization and other consulting services, and any exchange of data between

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

5. **Proprietary Rights.** Subject to the limited rights expressly granted hereunder, FormFox reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Company except as expressly set forth herein.

- (i) **Licensed Works and FormFox Products.** The FormFox® software is licensed and developed by FormFox. This scope of work provides for the deployment of FormFox® to sites owned by Company, as well as third party sites that perform services under contract to Company, its customers, or business partners. After acceptance by Company, FormFox® shall be available to Company as a licensed works. FormFox® will be available to Company as "FormFox Products" pursuant to the subscriber agreement required for each registered user.
- (ii) **Ownership of Services.** The Services and all rights therein are and shall remain FormFox's property. This MSA, any SOW, nor Your use of the Services convey or grant to You any rights: (i) in or related to the Services except for the limited license granted above; or (ii) to use or reference in any manner FormFox's company names, logos, product and service names, trademarks or services marks or those of FormFox's licensors.
- (iii) **FormFox IP.** Company acknowledges and agrees that in providing the Services, FormFox will use certain documents, forms, website content and processes, software; know-how; trade secrets; methodologies; and other materials (in each case including but not limited to custody in control forms ("CCF") and the FormFox® software and related processes) (the "FormFox IP"). Company acknowledges and agrees that none of the FormFox IP will constitute work-for-hire, and that FormFox will retain all ownership rights to the FormFox IP. Company agrees that it will do nothing inconsistent with FormFox's ownership of the FormFox IP and that all improvements to the products, methods, and designs of FormFox IP shall be the sole and exclusive property of FormFox, whether such improvements are made by FormFox or Company.
- (iv) **Deliverables.** All Deliverables and all results of all development will be FormFox IP and owned by FormFox. Company shall at all times retain ownership of all data transferred or provided to FormFox via FormFox, pursuant to Section 7(iv) below (Ownership of Customer Data).

Ownership and the rights and interests of the parties with respect to Deliverables are subject to (a) any third party's ownership rights in the development tools used in the creation of, or embodied in, the Deliverables and (b) the applicable license agreements or other contracts that govern FormFox's and its Personnel's and subcontractor's use of the development tools.

- (v) **Ownership of Customer Data.** Subject to the terms of this MSA, Company hereby grants to FormFox a worldwide, non-exclusive, limited, non-transferrable right and license during the term of this MSA to store, host, reproduce, and maintain Customer Data solely for purposes making the Services Available to Company and for no other purpose. As between FormFox and Company, Company own and shall retain all right, title and interest, including, without limitation, all intellectual property rights, in Customer Data and any portion thereof. FormFox shall have only those rights in and to Customer Data that are expressly granted to FormFox under this MSA.
- (vi) **User Provided Content.** FormFox may, in FormFox's sole discretion, permit You from time to time to submit, upload, publish or otherwise make available to FormFox through the Services textual, audio, and/or visual content and information, including commentary and feedback related to the Services, and initiation of support requests ("User Content"). Any User Content provided by You remains Your property. However, by providing User Content to FormFox, You grant FormFox a worldwide, perpetual, irrevocable, transferable, royalty-free license, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such User Content in all formats and distribution channels now known or hereafter devised (including in connection with the Services and FormFox's business and on third-party sites and services), without further notice to or consent from you, and without the requirement of payment to You or any other person or entity.

You represent and warrant that: (i) You either are the sole and exclusive owner of all User Content or You have all rights, licenses, consents and releases necessary to grant FormFox the license to the User Content as set forth above; and (ii) neither the User Content, nor Your submission, uploading, publishing or otherwise making available of such User Content, nor FormFox's use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

You agree to not provide User Content that is defamatory, libelous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by FormFox in its sole discretion, whether or not such material may be protected by law. FormFox may, but shall not be obligated to, review, monitor, or remove User Content, at FormFox's sole discretion and at any time and for any reason, without notice to you.

- (vii) **Suggestions.** FormFox shall have a royalty-free, worldwide, transferable, sublicense-able, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Company, including Users, relating to the operation of the Services.

6. **Disclaimers/Warranties/Limitation of Liability.**

- (i) **THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." FORMFOX DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, NOT EXPRESSLY SET OUT IN THIS AGREEMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN ADDITION, FORMFOX MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE REGARDING THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, OR AVAILABILITY OF THE SERVICES OR ANY SERVICES OR GOODS REQUESTED THROUGH THE USE OF THE SERVICES, OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. FORMFOX DOES NOT GUARANTEE THE QUALITY, SUITABILITY, SAFETY OR ABILITY OF THIRD PARTY PROVIDERS. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY SERVICE OR GOOD REQUESTED IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.**
- (ii) **FORMFOX DOES NOT WARRANT OR SUPPORT THIRD-PARTY PRODUCTS OR SERVICES, WHETHER OR NOT THEY ARE DESIGNATED BY FORMFOX AS "CERTIFIED" OR OTHERWISE. FORMFOX HAS NO LIABILITY RELATED TO COMPANY'S USE OF THIRD PARTY APPLICATIONS OR SERVICES OR FOR ANY THIRD-PARTY PROVIDER'S ACTS OR OMISSIONS. FORMFOX IS**

NOT RESPONSIBLE FOR ANY DISCLOSURE, MODIFICATION OR DELETION OF CUSTOMER DATA RESULTING FROM ACCESS BY THIRD-PARTY APPLICATION PROVIDERS.

- (iii) **FORMFOX EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND RELATING TO THE SERVICES OR THE WORK PRODUCT PRODUCED BY THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, FORMFOX MAKES NO WARRANTY THAT THE SERVICES OR ANY WORK PRODUCT WILL MEET COMPANY REQUIREMENTS, THAT THE RESULTS OBTAINED FROM THE USE OF THE FOREGOING WILL BE ACCURATE OR ERROR-FREE, OR THAT SERVICES OR WORK PRODUCT WILL MEET COMPANY'S EXPECTATIONS. FORMFOX'S AGENTS HAVE NO AUTHORITY TO GIVE ANY WARRANTIES ON BEHALF OF FORMFOX.**
- (iv) **TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, MULTIPLE, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE RELATED TO OR IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY USE OF THE SERVICES, WHETHER IN AN ACTION BASED ON CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF THE NEGLIGENCE (EITHER ACTIVE, AFFIRMATIVE, SOLE, OR CONCURRENT) OF FORMFOX, EVEN IF ADVISED OR INFORMED IN ADVANCE OF THE POSSIBILITY THEREOF OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.**
- (v) **WITH THE EXCEPTION OF BREACH OF A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, INDEMNIFICATION OBLIGATIONS, OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS MSA, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY COMPANY HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT COMPANY PAYMENT OBLIGATIONS.**

7. **Infringement Indemnification.**

- (i) **Indemnification by FormFox.** FormFox will indemnify and defend Company, its officers, directors and employees against any third party claims arising out of Company's use of FormFox's intellectual property in the provision of Services under this MSA including, without limitation, violation of any trade secrets, proprietary information, trademark, copyright or patent rights arising out of or related to this MSA. Company will give prompt notice of any claim covered by the indemnification and will cooperate with FormFox, at FormFox's expense, in the defense of the claim if requested.

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

- a. Replacement: Replace FormFox's intellectual property by implementing a non-infringing product of equivalent functional and performance capability;
- b. Modification: Modify FormFox's intellectual property to avoid the infringement without eliminating the functional and performance capabilities of FormFox's intellectual property as described in its supporting documentation and the specifications attached to this MSA;
- c. Re-license: Obtain a license from the third party claiming infringement for FormFox's use of FormFox's intellectual property.

- (ii) **Indemnification by Company.** Company will defend FormFox against any third party claims and will indemnify and hold FormFox harmless from any resulting damage awards or settlement amounts in any cause of action to the extent such cause of action is based on the occurrence of Company Infringement or FormFox's use of Company Confidential Information as contemplated by this MSA.
- (iii) Claims for indemnity under this MSA shall be subject to the following additional terms: (i) The indemnified party shall provide prompt written notice, in reasonable detail, of any claim for which it may seek indemnification hereunder; (ii) If such notice is not provided within the time stated above, the indemnified party nonetheless shall be entitled to indemnification by the indemnifying party, except to the extent that indemnifying party is actually prejudiced by the late receipt of such notice; (iii) The Indemnified Party agrees to cooperate with Indemnifying Party in a commercially reasonable manner in the defense of such claim. Indemnifying Party shall at all times keep the Indemnified Party reasonably apprised of the status of any such action; (iv) The Indemnifying Party shall not effect a settlement of any such claim, without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld. It shall not be considered unreasonable to withhold consent if the settlement contains any admission on the part of the Indemnified Party of wrongdoing or contains any sanctions other than the payment of money that the Indemnifying Party agrees to and is able to pay.

- 8. **Insurance.** Each party, at its sole cost and expense, shall procure and maintain policies of comprehensive general liability and other insurance in the minimum amounts of \$1,000,000.00 per claim/\$2,000,000.00 aggregate to insure such party and its officers, agents, and employees against liability, claims or damages in connection with the performance of such party's responsibilities under this MSA. Evidence of each party's policies shall be submitted to the other upon the other's written request. Failure of a party to have insurance coverage, inability to obtain insurance coverage, or any inadequacy of insurance coverage of such party shall not relieve or decrease the indemnifying party of its liabilities under this MSA.

9. **Compliance with Law.**

- (i) **Compliance with Non-US Law.** FormFox does not make any representation that the Services or any material or information provided through the Services is appropriate to or available in locations outside of the United States. If Company accesses the Services from outside of the United States, Company is responsible for compliance with all applicable laws.
- (ii) **Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Company shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.
- (iii) **Federal Government End Use Provisions.** FormFox provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this MSA. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR

227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with FormFox to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.