FormAssembly Master Subscription Agreement

PLEASE READ THIS FORMASSEMBLY MASTER SUBSCRIPTION AGREEMENT (THE "**AGREEMENT**") CAREFULLY BEFORE LICENSING OR USING THE SYSTEM OR FORMS (EACH, DEFINED BELOW). BY USING THE SYSTEM OR A FORM, YOU ARE AGREEING TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MAY NOT USE THE SYSTEM OR FORMS.

This Agreement is a legal agreement between FormAssembly, Inc. ("**FormAssembly**") and you, either authorized to enter into this Agreement on behalf of a company or on behalf of yourself for your personal use of the System and Forms (defined below) ("**Customer**," "**Subscriber**," or "**you**"). The effective date of this Agreement ("**Effective Date**") is the earlier of the date that Customer signs or accepts this Agreement electronically ("**Effective Date**").

Exhibits. The following Exhibits are applicable to and form a part of this Agreement so long as such Exhibits are applicable, as stated in the Order Form, to the product that Customer has licensed or is accessing pursuant to this Agreement:

Exhibit A – Priority Support Services (as indicated in the applicable Order Form)
Exhibit B – Service SLA (as indicated in the applicable Order Form)
Exhibit C – Security of Information
Order Form

1) DEFINITIONS.

For the purposes of this Agreement, the following terms shall have the following meanings:

a. **"Customer Data"** means all data that Customer collects through the System and Forms and transmits through the Platform (defined below).

b. **"Customer's Environment"** means the place where the Forms (defined below) are located.

c. **"Customer Material"** means Customer's logo, images and formatting used to customize the Forms.

d. **"Fee(s)"** means the applicable fees charged to Customer to access and use the System, Forms and/or Support Services, as applicable. All Fees are in U.S. dollars.

e. **"FormAssembly IP"** means FormAssembly's intellectual property which may be accessed by Customer through the Forms and System, including the Software that is used to generate and create the Forms and the Marks, and the Forms' underlying

technology and intellectual property.

f. **"Forms"** means web-based forms configured by Customer using FormAssembly IP.

g. **"Order Form"** means a FormAssembly order form signed by authorized representatives of each party describing the services purchased, associated fees, and other terms agreed to by the parties.

h. **"Permitted Use"** means the use of System and Forms by Customer for Customer's personal or internal business purposes only.

i. "**Platform**" means the FormAssembly customer platform where customers log in to create Forms and access Customer Data.

j. **"Software**" means software programs, configurations, scripts, images, and intellectual property contained in FormAssembly's commercial products and developed by, owned by, or licensed to FormAssembly, with the exclusion of Third-Party Software (as defined below).

k. **"Software Update"** means any modification, fix or enhancement to the current version of the Software that FormAssembly generally releases or generally makes available to FormAssembly's other customers.

l. **"Support Services"** means annual, renewable services for the cloud products to which the Customer may optionally subscribe for Software. The Support Services include the Software Updates and only support the latest version of the Software.

m. **"System"** means the Platform and Software licensed by Customer pursuant to this Agreement.

n. **"Third Party Software"** means any software programs, configurations, scripts, images, and intellectual property contained in or distributed with FormAssembly's products, with the exclusion of Software, made available in source code, object code form, or other format. Licenses for each Third-Party Software component are subject to a separate license that accompanies, is embedded in, or is referenced by such component and not these terms.

2) **LICENSE GRANT.**

a. **Grant by FormAssembly**. Subject to the terms of this Agreement and full payment of License Fees as set forth in Section 7 of this Agreement, FormAssembly hereby grants Customer: (i) a limited, nonexclusive, nontransferable, non-assignable, non-sublicensable right to access the System for the Permitted Use; and (ii) a limited, perpetual (so long as Fees are fully paid), nonexclusive, non-transferable, non-assignable, non-sublicensable right to use the Forms on Customer's Environment for the Permitted Use.

b. **Grant by Customer**. As between the parties, the Customer owns all rights, title and interest in and to the Customer Data and Customer Materials. Customer grants to

FormAssembly a worldwide, royalty-free, transferrable and sublicensable license to FormAssembly to use Customer Data and Customer Materials solely for carrying out FormAssembly's obligations contemplated by this Agreement. Further, as it relates to FormAssembly's internal business purposes only, Customer grants to FormAssembly a non-exclusive right to use information and data gathered in connection with the Customer's use of the System and Forms to improve the System and Forms, and FormAssembly's products and services, as long as such information is in a form that is de-identified and anonymized and does not individually identify Customer.

3) **TRIAL VERSION TERMS.** To the extent Customer is using a free version of the System ("**Trial Version**") Customer is granted a term limited, nonexclusive, non-sublicensable, nontransferable, revocable license to use the Trial Version of the System for fifteen (15) days or as otherwise agreed to by the Parties in writing. To the extent Customer is using a Trial Version of the System, Customer agrees that Sections 2(a)(i), 4, 5(a), 6-12 only apply to Customer if Customer purchases a license from FormAssembly after the expiration of the Trial Version term. For clarity, if Customer purchases a license from FormAssembly, this Agreement in its entirety will become in effect at the time of purchase (with the exception of this Section 3). FORMASSEMBLY'S MAXIMUM LIABILITY TO CUSTOMER FOR THE USE OF THE TRIAL VERSION SHALL NOT EXCEED ONE HUNDRED DOLLARS ($100). THE TRIAL VERSION OF THE SYSTEM IS PROVIDED "AS IS" WITHOUT ANY WARRANTY.

4) **SUPPORT SERVICES.** If Customer purchases a package that includes certain Support Services, complies with the terms of this Agreement and provides full payment of the Fees, FormAssembly will provide Customer with the applicable Support Services attached hereto.

5) **OBLIGATIONS.**
   a. **By FormAssembly.** FormAssembly will provide any applicable Support Services in a professional and workmanlike manner. FormAssembly will use and implement reasonable security measures when administering the System and assist Customer in reasonable requests to access Customer Data.

   b. **Customer.** Customer will be responsible for using and implementing industry-standard security measures to protect its usernames and passwords used to access the Platform and Customer Data. Customer is responsible for all activities that occur under Customer's account. Customer will promptly notify FormAssembly if it discovers that its account has been accessed without authorization. Customer will assist FormAssembly in its reasonable requests to investigate any Customer Content that is in violation of this Agreement.

6) **OWNERSHIP AND RESTRICTIONS**.
   a. **Ownership.** Notwithstanding anything to the contrary in this Agreement, and except for the limited license rights expressly provided herein, Customer acknowledges that FormAssembly and its suppliers and licensors have and will retain all rights, title and interest in and to the FormAssembly IP, including and all copies, modifications, and

derivative works of the System, Software and Platform, including, without limitation, all patent, copyright, trademark, trade secret, trade dress, and other intellectual property rights. Customer acknowledges that it is obtaining only a limited license to access and use certain aspects of the FormAssembly IP as stated herein and that no ownership rights are being conveyed to Customer under this Agreement or notice. Customer agrees not to register or attempt to register, directly or indirectly, any of the FormAssembly IP or its suppliers.

b. **Protection of IP.** Neither the Customer nor its employees or agents shall cause or allow the FormAssembly IP, including the System, Forms or any information or data identified as or should be known to be FormAssembly confidential, trade secret, or proprietary information to be disclosed to third parties, duplicated, or used except as expressly permitted in this Agreement. Customer shall take all steps, both during and after the Term, to ensure that no unauthorized parties or persons will have access to any of the FormAssembly IP, including the System and Forms, and that no unauthorized copy, distribution or disclosure, whether in whole or in part, is made in any form. In the event Customer learns of any unauthorized access or disclosure of the FormAssembly IP or any credentials, Customer must promptly notify FormAssembly.

c. **Restrictions on Software Use.** Customer shall not: (i) reverse engineer, attempt to reverse engineer, or disclose, in any manner, directly or indirectly, any portions of the System or Forms; (ii) use the System in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the System, including their ability to engage in real time activities through the System; (iii) use any robot, spider, or other automatic device, process, or means to access the System for any purpose, including monitoring or copying any of the material on the System; (iv) use any manual process to monitor or copy any of the material on the System, or for any other purpose not expressly authorized in this Agreement, without our prior written consent; (v) use any device, software, or routine that interferes with the proper working of the System; (vi) introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful; (vii) attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the System, the server on which the System is stored, or any server, computer, or database connected to the System; or (viii) attack the System via a denial-of-service attack or a distributed denial-of-service attack. In the event Customer uses the System or Forms in violation of this Section, FormAssembly may immediately suspend Customer's licenses granted pursuant to this Agreement or terminate this Agreement in its entirety.

d. **Restrictions on Content Collection and Use.** Customer shall not use the Forms or System in any way or permit others to: (i) violate any applicable federal, state, local, or international law or regulation; (ii) exploit, harm or attempt to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise; (iii) send, knowingly receive, upload, download, use, or re-use any material that does not comply with these Agreement; (iv) transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain

letter," "spam," or any other similar solicitation; (v) transmit any sexually explicit material; (vi) to engage in any other conduct, including discrimination or harassment; (vii) use the Forms to collect credit card numbers or bank account numbers unless Customer is PCI compliant; or (viii) transmit, collect or create objectionable content as reasonably determined by FormAssembly in its sole discretion (collectively, "**Prohibited Content**"). In the event Customer uses the System or Forms to create or collect Prohibited Content, FormAssembly may immediately suspend Customer's licenses granted pursuant to this Agreement or terminate this Agreement in its entirety.

e. **Marks and Notices.** The System includes certain FormAssembly trademarks, service marks, and copyright notices (collectively the "**Marks**"). Customer is prohibited from altering or removing, including changing the size, location, color, and visibility characteristics of the Marks. No right, license, or permission to use any of FormAssembly's Marks is granted by this Agreement. Customer acknowledges and agrees that it will not use any of the foregoing in any manner not explicitly granted by FormAssembly.

7) **PAYMENT.**

a. **Fees and Expenses.** Fees are stated in U.S. Dollars, must be paid in U.S. Dollars, and are exclusive of out-of-pocket expenses. The parties agree that the terms of this Agreement will govern all purchases by Customer of licenses to the System. Unless otherwise agreed by the parties in writing, during the Term (as defined in Section 8) of this Agreement, such additional licenses can be purchased at the then current rates. FormAssembly may increase fees upon a Renewal Term (defined below in Section 8) by providing Customer with at least thirty (30) days' notice prior to the expiration date of the Term.

b. **Billing.** If Customer is paying by credit card, Customer authorizes FormAssembly to bill Customer's credit card for the Fees for the Initial Term, for the amount due for a Renewal Term, and/or for any Fees amount due at the time of billing. If FormAssembly has approved invoicing of Customer, FormAssembly will invoice Customer for the Fees at the time of execution of this Agreement and upon the submission of any future purchase order.

c. **Payment.** All payments are due within thirty (30) days of the date in which FormAssembly invoices Customer. FormAssembly reserves the right to suspend or cancel performance of all or part of the Support Services, or access to the Forms and System if payment has not been received within thirty (30) days of the invoice date.

d. **Late Payment.** If Customer fails to make payment with respect to any invoice by its due date such invoice shall be deemed delinquent and a finance charge equal to 1.5% per month totaling 18% per year, or the maximum rate permitted by applicable law, if less, of all outstanding balances shall be payable for each month, or portion thereof, during which the delinquency remains outstanding. Customer agrees to pay promptly all costs and expenses, including but not limited to reasonable attorneys' fees and costs of settlement incurred by FormAssembly to collect any outstanding balances due hereunder.

e. **Taxes.** All Fees are exclusive of any Taxes. Customer will pay to FormAssembly an amount equal to any Taxes arising from or relating to this Agreement, including without limitation, sales, service, use or value added Taxes, which are paid by or are payable by FormAssembly. "Taxes" means any form of taxation, levy, duty, customs fee, charge, contribution or impost of whatever nature and by whatever authority imposed (including without limitation any fine, penalty, surcharge or interest), excluding, however, any taxes based solely on the net income of FormAssembly. If Customer is required under any applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due to FormAssembly, then the sum payable to FormAssembly will be increased by the amount necessary so that FormAssembly receives an amount equal to the sum it would have received had Customer made no withholdings or deductions.

8) **TERM AND TERMINATION.**

a. **Term.** The term of this Agreement begins on the Effective Date and continues as long as Fees are paid and Customer's account is in good standing. The Agreement and Support Fees will begin on the Effective Date and continue for one (1) year ("**Initial Term**") and automatically renew for additional one (1) year terms for the most current version of the Software unless either party gives written notice to the other of its intention not to renew at least thirty (30) days before commencement of the next term ("**Renewal Term**"). The "Initial Term" along with the "Renewal Term" constitutes the "**Term**."

b. **Termination.** If Customer or FormAssembly materially breaches the terms of this Agreement, and such breach is not cured or remedied within thirty (30) days after written notice of the breach is given to the breaching party, then the other party, by giving written notice of termination to the breaching party, may terminate this Agreement; provided, however, that no cure period will be required for a breach by Customer of Section 6 hereof. Either party may terminate this Agreement immediately in the event the other party becomes insolvent; is adjudged bankrupt; makes an assignment for the benefit of its creditors of all or substantially all of its assets; voluntarily files for bankruptcy or has a receiver or bankruptcy trustee (or the like) appointed by reason of its insolvency or alleged insolvency; or becomes the subject of termination, dissolution, or liquidation proceedings or otherwise discontinues business (provided no authorized successor continues such party's operations). Without prejudice to any other right or remedy of FormAssembly, in the event either party terminates this Agreement (with the exception of Customer's termination for FormAssembly's material uncured breach of this Agreement), Customer will pay FormAssembly for all Software and Support Services provided up to the date of termination.

c. **Effect of Termination.** If this Agreement is terminated for any reason, Sections 1, 5, 6, 7, 8(c), 10, 11, 12, 13, 14, 15, 16, 17 and 18 of this Agreement will survive such termination.

9) DATA PRIVACY, SECURITY AND NOTIFICATIONS

a. **Data Disclosures.** FormAssembly will not, without the Customer's prior written consent, provide any data or information inputted by the Customer or the users within the Forms to any third party, except for disclosure as required by law or legal service, and to persons who need to know such data or information for purposes of carrying out FormAssembly's duties under this Agreement and who have been informed of the terms and conditions of this Agreement as to the confidential nature and treatment of the data or information and have agreed to comply herewith. If applicable, to the extent Customer is subject to data privacy laws, the Data Processing Addendum attached hereto is hereby incorporated into this Agreement.

b. **Security.** FormAssembly takes security seriously and maintains formal security program designed to: (i) provide organizational and technical measures to manage the security and integrity of Customer Data; (ii) mitigate against threats or hazards to the security or integrity of Customer Data; and (iii) minimize risk of unauthorized access to Customer Data. Upon Customer's request, FormAssembly will provide Customer with a copy of FormAssembly's security standards.

c. **Security Breach Notification**. If either party confirms a security breach has occurred, such party must promptly notify the other party of the security breach, unless it determines that it is legally prohibited from doing so. Additionally, each party will reasonably assist the other party in mitigating any potential damage to the extent it is under their control. Each party shall bear the costs of its own legally required remediation to the extent the breach or security incident was caused by it. As soon as reasonably practicable after any such security breach, if it is demonstrated that it was not caused by Customer or its other suppliers or representatives, FormAssembly shall conduct a root cause analysis and, upon request, will share the results of its analysis. In such a case, FormAssembly will establish a remediation plan which it will share with Customer as soon as reasonably practicable. Additional information and details with regard to FormAssembly's policies and practices regarding its use of Customer Data is as set forth under the FormAssembly Privacy Policy available at https://www.formassembly.com/legal**.**

10) CONFIDENTIALITY.

a. **Obligation.** The party receiving information ("**Receiving Party**") from the party disclosing information ("**Disclosing Party**") shall keep all confidential information that is marked as confidential and that it receives in connection with this Agreement confidential, including but not limited to pricing and product roadmaps ("**Confidential Information**"), using the same protections that it applies to its own information of like importance, but in no event less than reasonable care, and may use such information solely for the purposes contemplated by this Agreement or as otherwise agreed. Confidential Information may be disclosed solely to employees, contractors and consultants who have a legitimate need to know such information and are bound to FormAssembly under confidentiality restrictions substantially equivalent to this Section 10(a).

b.   **Exceptions.** Receiving Party's obligations under Section 10(a) with respect to Disclosing Party's Confidential Information will not apply to information that: (i) was rightfully in possession of Receiving Party without any obligation of confidentiality prior to receipt of such Confidential Information from Disclosing Party; (ii) is or becomes a matter of public knowledge through no fault of the party receiving such Confidential Information hereunder; (iii) is rightfully received from a third party without a duty of confidentiality; (iv) is independently developed by Receiving Party without breach of any confidentiality obligations; or (v) is disclosed by Receiving Party with Disclosing Party's written approval. In addition, Receiving Party will be allowed to disclose (x) Disclosing Party's Confidential Information to the extent that such disclosure is required by law or by the order of a court or similar judicial or administrative body, provided that Receiving Party notifies Disclosing Party of such required disclosure promptly and in writing and cooperates with Disclosing Party, at Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure, or (y) the terms and conditions of this Agreement in confidence in connection with an actual or proposed merger, acquisition, or similar transaction.

c.   **Acknowledgement.** FormAssembly will follow the data security measures set forth in this Agreement. However, to the extent Customer uses the Forms to collect sensitive personal data, FormAssembly is not responsible for disclosures of access to personal information by third parties outside of FormAssembly's control. FormAssembly will comply with the legal obligations applicable to FormAssembly in the event it experiences a "data breach" as defined by applicable state law. In the event monetary relief is not an adequate remedy, the parties may seek equitable remedies for a breach of this Section.

11) INDEMNIFICATION.

a.   **By FormAssembly**. FormAssembly will indemnify, defend and hold harmless Customer from any action or other proceeding brought against Customer to the extent that it is based on a claim that the use of the System delivered under this Agreement (i) infringes any U.S. copyright or U.S. patent of a third party (ii) FormAssembly's gross negligence and willful misconduct; (iii) FormAssembly's violation of applicable law; or (iv) breach of Section 9(b); provided that Customer gives FormAssembly prompt notice in writing of a complaint, gives FormAssembly sole authority to defend the same and gives FormAssembly all available information assistance and authority in connection therewith. FormAssembly will have control of the defense of such proceeding, including appeals and of all negotiations therefor, including the right to effect the settlement or compromise thereof. In the event of such a complaint or if in FormAssembly's reasonable opinion such a complaint is likely to be successfully made, FormAssembly shall, at its option and expense, to the extent necessary to provide substantially equivalent and compatible System, (a) procure for Customer the right to continue using the System, (b) replace the same with non-infringing System, (c) modify the same so that it becomes non-infringing and conforms in all material respects, or (d) terminate this Agreement. In the event that the infringing System cannot be replaced or modified as set forth herein in a commercially reasonable manner, FormAssembly may discontinue

the System, or that portion of the System, and the access granted hereunder will terminate. FormAssembly will not have any liability to Customer if any such infringement, or complaint thereof, is based upon or arises out of (v) non-compliance with the design, plans or specifications furnished by or on behalf of FormAssembly or this Agreement; (w) the use of the System in a manner for which the same was neither designated nor contemplated; (x) modifications made to the System by or on behalf of Customer; or (y) the claimed infringement of any patent in which Customer or any subsidiary or affiliate of Customer has any direct or indirect interest, by license or otherwise.

b. **By Customer.** Customer shall indemnify, defend and hold harmless FormAssembly from all damages, costs, losses, settlements, awards, penalties, injuries, and expenses and liability (including reasonable attorneys' fees) for any third-party claims that arise out of (i) Customer's use or misuse of the System or any FormAssembly IP ; (ii) Customer's unauthorized modifications of the System; (iii) violation of law or this Agreement; (iv) Customer's gross negligence, willful misconduct; (v) a claim that the Customer Data or Customer Material infringes or misappropriates the right of another party; or (v) breach of Section 6, provided that FormAssembly gives Customer prompt notice in writing of a complaint, gives Customer sole authority to defend the same and gives Customer all available information, assistance and authority in connection therewith. Customer will have control of the defense of such proceeding, including appeals and of all negotiations therefor, including the right to effect the settlement or compromise thereof.

12) LIMITATION OF LIABILITY, DISCLAIMER OF DAMAGES AND WARRANTY.

a. **Limitation of Liability.** EXCEPT FOR EACH PARTY'S BREACH OF SECTION 9(B) (SECURITY), EACH PARTY'S INDEMNIFICATION OBLIGATIONS TO THE OTHER PARTY, MISAPPROPRIATION OR INFRINGEMENT BY CUSTOMER OF FORMASSEMBLY'S IP, AND CUSTOMER'S PAYMENT OBLIGATIONS, EACH PARTY'S AND THEIR RESPECTIVE AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE, WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO FORMASSEMBLY UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. FOR CLAIMS ARISING OUT OF A BREACH OF SECTION 9(B) AND FOR FORMASSEMBLY'S INDEMNIFICATION OBLIGATIONS, THE MAXIMUM LIABILITY OF EACH PARTY TO THE OTHER PARTY SHALL NOT EXCEED TWO TIMES (2X) FEES PAID OR PAYABLE IN THE PRIOR TWELVE (12) MONTHS.

b. **Disclaimer of Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL FORMASSEMBLY OR ITS AFFILIATES BE LIABLE TO CUSTOMER OR ITS AFFILIATES FOR: (I) ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR (II) FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR

ANTICIPATORY PROFITS, EVEN IF FORMASSEMBLY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

c.   **Bases of the Bargain.** EACH PARTY RECOGNIZES AND AGREES THAT THE LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL BARGAINED FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

13) WARRANTIES

a. **By Both Parties:** Each party represents and warrants to the other party that: (i) it has the requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement; (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement: (x) have been duly authorized by the requisite action on the part of such party; and (y) do not conflict with or constitute a breach of any contract or other obligation owed to any third party.

b. **By FormAssembly:** FormAssembly represents and warrants to Customer that: (i) FormAssembly will provide the Platform with promptness and diligence and in a professional and workmanlike manner and in accordance with applicable law; (ii) FormAssembly will not intentionally insert or cause any virus to be inserted into the Platform; and (iii) the System will function in all material respects to the Documentation.

c. **By Customer.** Customer represents and warrants to FormAssembly that: (i) it has the authority to collect Customer Data through the Forms and has adequate notices placed on the Customer's Environment regarding such collection; (ii) Customer will comply with all applicable law when using the System and Forms; and (iii) Customer will not insert or cause any virus to be inserted into the Platform.

   i) **DISCLAIMER OF WARRANTY.** EXCEPT AS SET FORTH IN THIS AGREEMENT, THE SYSTEM AND FORMS ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT OF A MATERIAL BREACH BY FORMASSEMBLY OF ITS WARRANTIES SET FORTH IN SECTION 13(B), FORMASSEMBLY AGREES THAT IT WILL USE COMMERCIALLY REASONABLE EFFORTS TO RE-PERFORM THE DELINQUENT SERVICE OR COMPONENT OF THE SOFTWARE. IF, AFTER SUCH RE-PERFORMANCE, CUSTOMER STILL BELIEVES THAT THE APPLICABLE SERVICE OR COMPONENT OF THE SOFTWARE IS NOT IN MATERIAL COMPLIANCE WITH THE WARRANTIES SET FORTH IN SECTION 13(B), THEN CUSTOMER MAY TERMINATE THIS AGREEMENT AND RECEIVE A REFUND OF PREPAID, UNUSED FEES ASSOCIATED WITH SUCH MATERIAL NON-COMPLIANCE. THE REMEDIES SET FORTH IN THIS SECTION 13(D) ARE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES HEREUNDER FOR FORMASSEMBLY'S BREACH OF SECTION 13(B). NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN

BY FORMASSEMBLY, ITS AFFILIATES, DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN. FORMASSEMBLY DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SYSTEM OR FORMS WILL BE UNINTERRUPTED OR OPERATE ERROR FREE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR RELATING TO ANY SUPPORT SERVICES FORMASSEMBLY SHALL HAVE NO LIABILITY OR OBLIGATION HEREUNDER ARISING FROM OR RELATED TO: (I) ACCIDENT, NEGLECT, MISUSE, ABUSE OR DEFAULT OF OR BY THE CUSTOMER, CUSTOMER'S EMPLOYEES OR AGENTS, OR ANY THIRD PARTY; (II) ANY FAULT IN ATTACHMENTS OR ASSOCIATED PRODUCTS, COMPONENTS, HARDWARE, OR SOFTWARE (WHETHER OR NOT SUPPLIED BY FORMASSEMBLY OR ITS AFFILIATES) WHICH DO NOT FORM PART OF THE SOFTWARE COVERED BY THIS AGREEMENT; (III) CUSTOMER'S FAILURE TO ABIDE BY THIS AGREEMENT; (IV) ANY ERROR IN THE SOFTWARE CAUSED BY THE FAILURE OF ANY PRODUCTS OR COMPONENTS NOT SUPPLIED OR PROVIDED BY FORMASSEMBLY OR ITS AFFILIATES; (V) ANY ERROR IN SOFTWARE WHICH ARISES FROM MODIFICATION OR DAMAGE IN ANY MANNER BY ANY PERSON OR ENTITY OTHER THAN FORMASSEMBLY; (VI) ANY BREACH OF THIS AGREEMENT; OR (VII) AN ACT OF GOD, LIGHTNING, FIRE, FLOOD, WAR, ACT OF VIOLENCE OR ANY SIMILAR OCCURRENCE.

14) **CONTINUING BUSINESS.** Nothing in this Agreement will preclude or limit FormAssembly from providing software, materials, or services for itself or other customers, irrespective of the possible similarity of such software, materials or services to those which might be delivered to Customer.

15) **EXPORT RESTRICTIONS.**

   a. Customer acknowledges that FormAssembly may supply Customer with technical data, technology, and software (collectively "**Deliverables**") that are not only subject to the export control laws and regulations of the United States ("**U.S. Export Controls**") but may also be subject to the export control laws and regulations of the country in which the System or Forms are purchased. Customer agrees to abide by U.S. Export Controls and all other applicable export control laws and regulations ("**Export Controls**").

   b. In addition, under Export Controls and certain economic sanctions imposed by the U.S. and countries in which the System and Forms are purchased ("**Economic Sanctions**"), the System and Forms purchased may not be sold, leased or otherwise transferred to certain restricted end-users or to restricted countries. In addition, the Software may not be sold, leased or otherwise transferred to, or utilized by, an end-user engaged in activities related to weapons of mass destruction in violation of Export Controls and such Economic Sanctions. The Customer understands that applicable requirements for approval or licensing of Deliverables or restrictions may vary depending on the Software delivered and may change over time and that, to determine the precise controls applicable to the Software acquired, it may be necessary to refer to relevant Export Controls and Economic Sanctions.

   c. FormAssembly will not be responsible for compliance by Customer with applicable

Export Controls or Economic Sanctions, including but not limited to, fulfillment of obligations or requirements for such Deliverables. Customer agrees to defend and indemnify FormAssembly against any demands, notices, fines, penalties, sanctions, claims, liabilities and costs, including attorney's fees, which result from Customer's breach of any representation or warranty herein. The indemnification provisions of this Section shall survive the expiration or termination of this Agreement. In the event that Customer breaches this Section 15, FormAssembly may immediately terminate this Agreement and its obligations hereunder without liability to Customer.

16) **MODIFICATIONS.** FormAssembly may, at any time, modify, upgrade or release a new version of the System, or any portion of its features and functions. Unless otherwise expressly and separately agreed by FormAssembly, any new version of the System will be subject to the terms of this Agreement. Certain features and functions of the System may be made available based on the specific configuration of the System or only for certain subscription levels and, therefore, may not be made available to you as part of Customer's subscription level. You may be required to pay additional fees in order to access or use newly added features or functionality.

17) **USE OF MARKS AND IDEAS.**

a. **Customer Marks.** Customer hereby grants FormAssembly a non-exclusive, royalty-free license to use Customer's name, Customer's logo artwork, and the name of any product or service that results from the Customer's use of the System covered by the Agreement in FormAssembly's advertising, press, promotion, and similar public disclosures. If Customer does not wish to allow FormAssembly the foregoing grant, Customer may object to this right in writing. This provision will survive the termination and/or completion of this Agreement.

b. **Freedom to Use Ideas.** Customer grants FormAssembly a worldwide, perpetual, non-exclusive license to any ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of this Agreement, including, without limitation, any suggestions or feedback provided with respect to the System or any of the FormAssembly IP. In FormAssembly's sole discretion, FormAssembly may use such licensed materials, without an obligation to account, in any way that it deems appropriate, including by or for itself or its clients or customers, notwithstanding anything to the contrary contained in this Agreement.

18) **MISCELLANEOUS.**

a. **Notices.** Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent to the respective addresses indicated on the order form or to the facsimile numbers set forth below, using a method that provides for positive confirmation of delivery; provided that any notice from Customer to FormAssembly includes a copy sent to: FormAssembly, 885 S College Mall Rd, #399 Bloomington, IN 47401

b. **Electronic Signature Consent**. Customer agrees to the use of electronic documents and

records in connection with this Agreement and all future documents and records in connection with the System—including this electronic signature and disclosure notice—and that this use satisfies any requirement that FormAssembly provide Customer these documents and other content in writing. If Customer does not agree, Customer should not enter into this Agreement. Where and to the extent required under applicable law, you have the right to receive a paper copy of all documents and records. You may (i) obtain a paper copy of any document or record (free of charge), (ii) withdraw your consent to the use of electronic documents and records, or (iii) update your contact information through your account. To receive or access electronic documents and records, Customer must have the following equipment and software: (a) a device that is capable of accessing the Internet; (b) a compatible Internet browser; and (c) software that permits Customer to receive and access Portable Document Format or "PDF" files, such as Adobe Acrobat Reader 8.0 or higher. To retain documents and records, Customer's device must have the ability to download and store PDF files. Your access to this page verifies that Customer's system and device meets the above receipt, access, and retention requirements.

c. **Right to Refuse.** FormAssembly reserves the right to refuse any Customer access to the System for any reason, including, but not limited to Customer's use of the System in a manner prohibited by this Agreement. In the event that FormAssembly refuses to provide Customer with access to the System, FormAssembly agrees to refund any Fee paid by Customer to FormAssembly, less any fees incurred by FormAssembly at the times the Fees were collected from and/or refunded to Customer.

d. **Assignment.** This Agreement is binding on the parties to this Agreement, and nothing in this Agreement confers upon any other person or entity any right, benefit or remedy of any nature whatsoever, save for the parties' affiliates as expressly provided in this Agreement. This Agreement is assignable by either party only with the other party's prior written consent, which will not be unreasonably withheld. Notwithstanding the foregoing, FormAssembly may assign this Agreement to its affiliate, subsidiary or pursuant to a merger or a sale of all or substantially all of such party's assets or stock upon written notice and without the prior approval of Customer.

e. **Force Majeure.** Except with respect to the payment of all Fees owed under this Agreement, neither party will be liable for nonperformance or delays of its obligations under this Agreement caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control. If such delay is caused by circumstances beyond the reasonable control of the party so delaying, the party shall be entitled to a reasonable extension of time for the performance of such obligations.

f. **Independent Contractor.** Customer is an independent contractor and nothing in this Agreement will be construed to create an employee relationship between Customer (or any Customer personnel) and FormAssembly (or any FormAssembly personnel). Each party shall be solely responsible for the payment of all federal, state or local Taxes payable with respect to all amounts paid to FormAssembly under this Agreement. Nothing contained in this Agreement shall be construed or applied to create a

partnership.

g. **Non-solicitation.** During the Term and for one (1) year thereafter, Customer agrees not to solicit or hire any personnel of FormAssembly with whom Customer has had contact in connection with this Agreement; provided that Customer may hire an individual employed by FormAssembly who, without other solicitation, responds to advertisements or solicitations aimed at the general public.

h. **Governing Law.** All matters relating to the System, Forms and this Agreement, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). Any legal suit, action, or proceeding arising out of, or related to, this Agreement shall be instituted exclusively in the federal courts of the United States or the courts of the State of Delaware, in each case located in the County of New Castle. Customer hereby waives any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

i. **Dispute Resolution.** If Customer is not satisfied with the Software provided by FormAssembly, Customer agrees to give FormAssembly a written description of the problem(s) and to make a good faith effort to amicably resolve the problem with FormAssembly before commencing any proceeding. FormAssembly also agrees to make a good faith effort to amicably resolve any problem with Customer before commencing any proceeding. No claim or action, regardless of form, based on this Agreement may be brought by either party more than one (1) year after the cause of action has occurred.

j. **Headings.** All headings contained in this Agreement are inserted for identification and convenience and will not be deemed part of this Agreement for purposes of interpretation.

k. **Severability.** If any provision of this Agreement is for any reason declared to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby. Such invalid or unenforceable provision shall be deemed modified to the extent necessary to render it valid and enforceable, and if no modification shall render it valid and enforceable, this Agreement shall be construed as if not containing such provision and the rights and obligations of the parties shall be construed and enforced accordingly.

l. **Waiver.** The delay or failure of either party to exercise any rights hereunder will not constitute or be deemed a waiver or forfeiture of such rights. No waiver will be valid unless in writing and signed by an authorized representative of the party against whom such waiver is sought to be enforced.

m. **Complete Agreement.** This Agreement together with the terms referenced herein, any applicable order forms, and the applicable Exhibits, constitute the exclusive terms and conditions with respect to the subject matter hereof, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document

used by Customer to place orders or otherwise affect transactions hereunder. This Agreement represents the final, complete and exclusive statement of the agreement between the parties with respect to subject matter hereof and all prior written agreements, including NDAs and all prior and contemporaneous oral agreements with respect to the subject matter hereof are merged therein. In the event of a conflict between this Agreement and any agreement or the Exhibits, the Exhibits shall govern.

n. **Amendment.** Except as expressly set forth herein, this Agreement may not be amended, supplemented or modified by Customer except by a written instrument signed by the parties hereto, which instrument makes specific reference to this Agreement.

o. **Changes to this Agreement.** Except to the extent prohibited by applicable laws, FormAssembly may change the terms and conditions of this Agreement from time-to-time. The foregoing changes shall apply to all use of the System and Forms. Customer's continued access to or use of the System and Forms after any change to this Agreement goes into effect will constitute Customer's acceptance of such change. Changes to this Agreement will not apply to any dispute between Customers and FormAssembly arising prior to the date on which the changes went into effect. The "Last Updated" legend above indicates when this Agreement was last changed.

p. **Agreement Precedence**. Customer agrees that the terms of both this Agreement and any document linked or referenced herein override any previous agreements or terms and conditions associated with Customer's relationship with FormAssembly, including any purchase orders, non-disclosure agreements and/or invoices. In the event of a conflict between the Agreement and the order form, this Agreement is linked within or referenced, this Agreement form will govern and control.

IN WITNESS WHEREOF, FormAssembly and Customer agree that this agreement is effective as of the date of execution of the MSA and the product order form..

COMPANY

FormAssembly, inc.

By:

Name:

Title:

Date:

COUNTERPARTY

(customer)

By:

Name:

Title:

Date:

EXHIBIT A – PRIORITY SUPPORT

This exhibit is applicable to and forms a part of this Agreement so long as such exhibit is applicable to the product that Customer has licensed or is accessing pursuant to this Agreement, as indicated in the applicable Order Form.

1. Definitions
- "Customer Success Manager" or "CSM" means an individual assigned by FormAssembly to Customer to act as a point of contact into FormAssembly for support and implementation services-related matters.
- "Critical Issue" means a complete loss of application functionality with no available workaround.
- "High Issue" means a severe loss of application functionality or performance resulting in the interruption of data collection processes or the loss of data, with no available workaround.
- "Response" means the initial response by a Support Specialist to a Support Request reported by a Customer's User. The Response may be an acknowledgement of receipt or may include more substantive information or guidance.
- "Support Specialist" means an individual assigned by FormAssembly to handle Customer's Support Request.
- "Support Request", or "Case" means the Customer request for assistance, as entered into the FormAssembly Support system, available from within the FormAssembly application, or by email at support@formassembly.com.

2. Support Hours
Support will be available to you Monday to Friday, 24 hours per day.

3. Response Time Guarantee
FormAssembly will use commercially reasonable efforts to provide Response within the Initial Response Time Guarantee outlined below, according to the level of support purchased. The time period starts from the reception of Support Requests submitted during Support Hours. For Support Requests submitted outside of Support Hours, the period shall start at the beginning of the next Support Hours period.

Purchased Support Level	Initial Response Time Guarantee	Case Escalation
Silver	4 hours	CSM Team
Gold	2 hours	Designated CSM
Platinum	1 hour	Designated CSM

4. Designated Customer Success Manager (CSM)
The CSM's role is intended to be flexible to best suit the specific needs of Customer. The CSM will serve as a single point of escalation for any support or implementation service matter. In addition, the CSM will conduct periodic business reviews of progress against defined business goals, coordinate implementation services if applicable, facilitate periodic communication with FormAssembly product development team with respect to product roadmap, and at Customer's request, arrange for a quarterly review of all support and implementation related matters.

5. Escalation Procedure

The CSM will be available during US business hours, or at different time by mutual arrangement, to handle escalation requests by email or by phone. Customer must submit a Support Request prior to escalating an issue. Phone escalation is limited to Support Requests regarding High or Critical issues.

FormAssembly

EXHIBIT B – SERVICE LEVEL AGREEMENT (SLA)

This exhibit is applicable to and forms a part of this Agreement so long as such exhibit is applicable to the product that Customer has licensed or is accessing pursuant to this Agreement, as indicated in the applicable Order Form.

1. Definitions

- "Covered Service" means the FormAssembly Enterprise or Government Cloud instance allocated to the Customer.
- A "Service Credit" is a pro-rated dollar credit, calculated as set forth below, that we may credit back to future bills of Customer.

2. Service Availability

FormAssembly shall make commercially reasonable efforts to maintain availability of the Covered Service 99.9% of the time (the "Service Level Objective"), excluding scheduled maintenance time and extraordinary circumstances as described in Section 6 of this Exhibit.

Compliance with Service Level Objective is measured over a calendar month and is based on total outage time incurred by Customer. If the Covered Service is unavailable, an "Outage" corresponding to such incident will be measured from the time of the beginning of unavailability until the Covered Service is restored.

The Covered Service shall be considered "Unavailable" when all of the following occur: a) Customer is unable to log in, b) no useful work can be performed, and c) form submissions are no longer processed.

3. Service Availability Report

FormAssembly will provide upon Customer's request a report of actual Services Availability, as recorded by an independent and reputable third-party monitoring service selected by FormAssembly.

4. Service Credit

In the event that we fail to meet the Service Level Objective in any calendar month, we will credit to you an amount equal to the prorated fees as follows:

Outage Duration:	Service Credit
At least .1% but less than .3%	One (1) Day
At least .3% but less than .5%	Two (2) Days
At least .5% but less than .9%	Five (5) Days
At least 1% but less than 2%	Ten (10) Days
At least 2%	Fifteen (15) Days.

For reference, .1% is equal to 43 minutes and 49.7 seconds.

Service Credit may be used solely for future payments due for the Subscription.

5. Exclusions

For the purpose of this SLA, the following conditions do not count toward any Outage duration and are not eligible for Service Credits.

(a) Planned downtime, of which we shall give at least 48 hours' notice via email to the primary contact on record, and which we shall schedule to the extent practical during the weekend hours from 6:00 p.m. US Eastern time Friday to 6:00 a.m. US Eastern time Monday.

(b) Suspension of service as provided in the Subscription Agreement.

(c) Any unavailability caused by circumstances beyond our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), Internet service provider failures or delays.

6. Service Credit Claim

In order to be eligible for a Service Credit with respect to any Outage, the Customer must submit a claim to FormAssembly customer support by the end of the billing month following the billing month in which the Outage occurs.

FormAssembly will use all information reasonably available to it to validate such claims and make a good faith judgment on whether the SLA applies to the claim.

EXHIBIT C - SECURITY OF INFORMATION

During the term of the Agreement, FormAssembly shall maintain the confidentiality, integrity and availability of User data and keep in force physical, technical, and administrative safeguards that are no less rigorous than accepted industry practices. FormAssembly shall ensure that all such safeguards, including the manner in which User data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws. If FormAssembly will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, FormAssembly shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements.

At a minimum, FormAssembly's safeguards for the protection of User data shall include:
   i.   limiting access of User data to authorized persons;
   ii.   securing business facilities, data centers, systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability;
   iii.   implementing network, device application, database and platform security;
   iv.   securing information transmission, storage and disposal;
   v.   implementing authentication and access controls within applications, operating systems and equipment;
   vi.   encrypting User data stored on any mobile media;
   vii.   encrypting User data transmitted over public or wireless networks;
   viii.   segregating User data from information of FormAssembly or its other customers so that User data is not commingled with any other types of information;
   ix.   implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law;
   x.   providing appropriate privacy and information security training to FormAssembly's personnel at least once per year,
   xi.   maintain an information security program with a designated information security officer,
   xii.   review and maintain applicable policies, procedures and standards at least once per year.

At least once per year, FormAssembly shall conduct an audit of the information technology and information security controls for all facilities used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on the recognized industry best practices. Upon Customer's written request, Service Provider shall make available to Customer for review, as applicable, the audit reports and any reports relating to its certifications. Customer shall treat such audit reports as FormAssembly's Confidential Information under this Agreement.