

B
 BROKEN ARROW PUBLIC SCHOOLS
Educating Today *Leading Tomorrow*

Contract Committee Review Request
MUST BE COMPLETED IN FULL

Date: 3/29/24

Contract/Agreement Vendor: Formstack LLC
Name of Vendor & Contact Person

Vendor Email Address

Dates of Service: 7/11/24 - 7/10/25

Describe Contract (Technology, program, consultant-prof Development, etc.)

Please use Summary below to fully explain the contract purchase, any titles, and details for the Board of Education to review.

Students

Reason/Audience to benefit

4/15/2024

BOE Date


\$ 3,484.01

Amount of agreement

Person Submitting Contract/Agreement for Review: Brandon Chitty

PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK

Principal &/or Director or Administrator: 

Does this Contract/Agreement utilize technology? YES / NO
 If yes, Technology Admin: 

Leadership Team Member: Karl Deyo

Funding Source: 11/164 164-2230-653-000-0000-000-sites
Fund/Project OCAS Coding

<input checked="" type="checkbox"/> Consent <input type="checkbox"/> Action	Accept and approve the Renewal agreement between Broken Arrow Public Schools and Formstack, LLC. Cost to the district is \$3,484.01. Formstack is a data management solution that helps users collect information through various types of online forms, including surveys, job applications, event registrations, and payment forms. Formstack tracks the purchase of Chromebook insurance for students through Paypal. / B.Chitty
Summary <small>This area must be complete with full explanation of contract</small>	

The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:00a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Janet Brown. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.

Formstack, LLC
11671 Lantern Road, Suite 300
Fishers, IN 46037

Prepared for:
Broken Arrow Public Schools
A00019207



PLAN DESCRIPTION	QUANTITY	SUBTOTAL
*** 07/11/2024– 07/10/2025 ***		
Platinum - Annual Charge	1	\$3,484.01
TOTAL		\$3,484.01

NOTE: This estimate is not a contract or a bill; it is an estimate on service pricing as of the issued date. If prices or discounts change or additional services are required, we will inform you prior to issuing an invoice.



Last updated August 2023

THIS SOFTWARE SERVICES AGREEMENT (THIS "AGREEMENT") IS ENTERED INTO BETWEEN FORMSTACK, LLC ("FORMSTACK") AND CUSTOMER (DEFINED HEREIN), GOVERNS CUSTOMER'S ACCESS TO, USE OF, AND RECEIPT OF FORMSTACK'S SERVICES (DEFINED HEREIN) AND IS EFFECTIVE AS OF THE DATE OF CUSTOMER'S ACCEPTANCE.

BY (1) INDICATING CUSTOMER'S ACCEPTANCE, (2) EXECUTING A SALES ORDER FORM, OR (3) USING THE SERVICES ("ACCEPTANCE"), CUSTOMER SIGNIFIES ACCEPTANCE OF THIS AGREEMENT AND ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE SAME. IF CUSTOMER DOES NOT ACCEPT THIS AGREEMENT, THEN CUSTOMER MUST NOT ACCESS OR USE THE SERVICES. AN INDIVIDUAL ACCEPTING THIS AGREEMENT ON BEHALF OF AN ENTITY REPRESENTS THAT SHE HAS THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT AND ARE AT LEAST 18 YEARS OF AGE.

1. DEFINITIONS.

"Acceptable Use Policy" means Formstack's Acceptable Use Policy located at <https://www.formstack.com/legal/website-acceptable-use-policy>, incorporated herein by reference.

"Affiliate" means any entity, directly or indirectly, that now or hereafter is controlled by, is under common control with, or controls such party, where "control" means the direct or indirect ownership of more than 50% of the voting securities or other ownership interest of an entity. Subject to this Agreement, Customer's Affiliates may use the license granted hereunder.

"API" means the application programming interface(s) provided by Formstack that permit Customer to access the Subscription Services.

"Claim" means claims, actions, demands, lawsuits, or proceedings brought by an unaffiliated third party.

"Confidential Information" means all non-public information disclosed by a party ("Disclosing Party") under this Agreement to the other party ("Receiving Party"), whether orally or in writing, that is designated as "confidential" at the time of disclosure or that reasonably should be understood to be confidential given the nature of the information and/or the circumstances of disclosure, including, without limitation: the terms and conditions of the Agreement (including pricing), business and marketing plans, technology and technical information, products and product plans and designs, and business processes, trade secrets, financial data, and know-how. For clarity, the features, functionality and content of the Services (including all data and information made available by Formstack via the Services), any Documentation, and any information regarding planned modifications or updates to the Services or other Formstack products and services, constitute Formstack Confidential Information. Customer Confidential Information includes Customer Personal Data, as defined in GDPR.

"Customer" means the entity that is a party to this Agreement.

“Customer Data” means any data, information, or material that Customer provides to and stores in the Subscription Services, including Customer’s End User data, or to Formstack for the performance of the Agreement.

“Documentation” means official technical user documentation about the Subscription Services provided by Formstack. For the avoidance of doubt, any online community site, unofficial documentation, videos, white papers, marketing materials or related media, or feedback do not constitute Documentation.

“End User” means any Person, other than Customer or its Users, that may interact with the Subscription Services, including any Person submitting Customer Data.

“Fees” means the applicable charges that Customer is to pay to Formstack for the Services as set forth in the applicable Sales Order or SOW, as applicable. Fees are non-cancelable and all payments are nonrefundable.

“Losses” means damages, losses, liabilities, settlements, fines, penalties, judgments, expenses and costs (including reasonable attorneys’ fees) payable as a result of a Claim.

“Malicious Code” means any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus,” “ransomware,” “worm” or any other code designed, intended to have, or capable of disrupting, disabling, harming, interfering with or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device; or (b) damaging or destroying any data or file.

“Person” means any individual, corporation, firm, association, partnership, limited liability company or other legal entity and any government agency, body or authority.

“Product-Specific Addenda” means additional terms specific to the product as set forth herein.

“Professional Services” means professional services, such as implementation, consulting services, and training, as expressly set forth in an SOW.

“Sales Order” means an online order form, product information dashboard, or other ordering document issued by Formstack that specifies the Services provided hereunder along with pricing and other related information (e.g., authorized End User, Term, Usage Limits).

“Services” means Subscription Services, Professional Services and any other products or services provided by Formstack to the Customer.

“Statement of Work” or “SOW” means any written document executed by both parties that outlines the Professional Services to be provided by Formstack to Customer.

“Subscription Service(s)” means Formstack’s SaaS-based services and API made available and provided by Formstack to Customer.

“Systems and Applications” means applications, software, hardware, databases, data warehouses, network and communications equipment, websites, and other products or services provided by Customer or a third party.

“Test Data” means non-production data used to test the Formstack product that: (a) does not contain personal data or (b) is aggregate and anonymous data.

“Term” means the term of this Agreement, as outlined in Section 7.

“Units” means the basis on which fees are established for Services, as outlined in the Sales Order or Documentation, as applicable.

“User” means a Customer, an employee, independent contractor, or agent who has a business need to use the Services and Documentation for or on behalf of Customer under this Agreement.

2. GRANT; NO FEE ACCESS.

2.1 **Grant.** Upon payment of the fees and subject to Customer’s compliance with this Agreement, Formstack grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable right during the Term to internally: (i) access and use the Subscription Services and Documentation for Customer’s own internal business purposes and (ii) access, display, and use the Documentation. Customer may provide or make available to Customer’s Affiliates and Users the Subscription Services or Documentation.

2.2 **No Fee Access.** If Subscription Services are provided to Customer for evaluation, beta, release candidate, or free purposes, Formstack hereby grants to Customer, subject to Customer’s compliance with this Agreement, a limited, revocable, non-exclusive, non-transferable, non-sublicensable right to access and use evaluation, beta, or release candidate features and functionality or free versions of the Subscription Services pursuant to the terms of the Agreement and provided the Customer does not exceed any usage limits pertaining thereto and agrees to use Test Data only. Subscription Services provided for evaluation, beta, or release candidate purposes shall not be used for production use, and Customer’s access and use right shall terminate on the end date of the predetermined period or immediately upon notice from Formstack in its sole discretion, whichever occurs first. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES PROVIDED UNDER THIS SECTION ARE PROVIDED ON AN “AS-IS” BASIS AND WITHOUT ANY INDEMNIFICATION, SUPPORT, OR WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, AND FORMSTACK HEREBY DISCLAIMS AND EXCLUDES ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. Except to the extent such terms conflict with this Section, all other terms of this Agreement shall apply to the Services provided for evaluation, beta, release candidate, or free purposes.

3. USE OF SERVICES; RESTRICTIONS.

3.1 **Use of Services.** Customer acknowledges, agrees, and warrants that it: (i) will be responsible for its, its Users’ and End Users’ activity and use of the Services in accordance with the this Agreement and applicable laws and regulations and corresponding compliance with this Agreement, and if Customer becomes aware of any violation, Customer will immediately terminate the offending party’s access to the Services and notify Formstack; (ii) will install and utilize the latest version of the APIs (or other downloadable Formstack component) of the Services and only utilize the Services with properly licensed Systems and Applications; (iii) is legally able to process and legally provide Customer Data to Formstack (including the means by which Customer acquired Customer Data, such as obtaining appropriate consents or rights for such activities) and will be responsible for the accuracy, security, quality, integrity, and legality of the same; and (iv) is responsible for, and will maintain, the security, completeness, and accuracy of Customer’s registration information, account, passwords, and billing information (and promptly notify Formstack of any unauthorized access or use of the same or any other known or suspected breach of security). Formstack may suspend Customer’s access to or use of the Services immediately if Formstack reasonably believes

Customer's use of the Services may pose a security risk to or adversely impact the Services and related systems and infrastructure or create a risk of liability or harm to Formstack or its other customers or users.

3.2 Restrictions. Customer shall not (and shall not permit its Users or End Users) to, directly or indirectly, any of the following: (a) exceed its rights to use the Services pursuant to this Agreement and as set forth in the Sales Order; (b) make any Services available to anyone other than Customer, Users, or End Users, or use any Subscription Service for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in a Sales Order; (c) sell, resell, license, sublicense, distribute, rent, lease, loan, or otherwise transfer any Services; (d) reverse engineer, decompile, or disassemble, or otherwise obtain or attempt to create, derive, or obtain the source code or unauthorized access of the Services; (e) modify, translate, enhance, or otherwise change the Services or prepare derivative works of the Services, including the creation and distribution of add-ons or enhancements or incorporation independently or into another product unless expressly agreed between the parties; (f) use the Services to violate third party rights or applicable laws or to process, store, or transmit unauthorized, infringing, libelous, unlawful, or tortious data, information, or material, data, information, or material that it is not authorized to process, or data, information, or material in violation of third-party rights; (g) use the Services to store or transmit Malicious Code or interfere with, impair, or disrupt the integrity or performance of the Services, any other party's use of the Services, or third-party data contained therein; (h) use or otherwise exploit the Services for the purposes of benchmarking, competitive analysis, or the development of a competing software product; (i) scrape, export, store, or otherwise retain any copies of data accessible through the Services; (j) circumvent or attempt to circumvent any methods employed by Formstack to control access to the components, features, or functions of the Services; (k) use any automated means, including agents, robots, scripts or spiders, to access or manage the Subscription Services; and (l) conduct security testing, including load or performance testing, penetration testing, vulnerability scanning, or cloud security assessments, on Formstack's infrastructure, Services, or other products.

4. OWNERSHIP; FEEDBACK; CUSTOMER DATA; PROTECTION.

4.1 Ownership. Formstack (and its licensors) is the sole and exclusive owner(s) of all right, title, and interest in and to the Services and Formstack's proprietary property (including all improvements, enhancements, or modifications of the foregoing or any other intellectual property or proprietary rights) and reserves and retains all right, title and interest in and to the same. Customer shall not alter, obscure, or remove any intellectual property, proprietary, or legal notice from the Services or Documentation.

4.2 Feedback. Customer may from time to time provide suggestions, comments, or other feedback to Formstack with respect to the Services ("Feedback"). Customer grants to Formstack a worldwide, royalty-free, fully-paid, worldwide, transferable, sublicensable, irrevocable and perpetual license to use and incorporate the Feedback for any purpose.

4.3 Customer Data; Health Care Accounts.

4.3.1 Customer Data. As between Customer and Formstack, Customer is the sole and exclusive owner of all right, title and interest in and to the Customer Data and reserves all right, title and interest in and to the Customer Data not expressly granted under the Agreement. Customer will be solely responsible for the procurement, accuracy, quality, integrity, legality, and content of Customer Data. The Services are not intended to be a data backup service, and Customer shall not use the Services as a data backup service. Customer grants Formstack the right to host and process Customer Data for providing and improving the Services and to support Customer

under this Agreement. If Customer chooses to use Systems and Applications with the Subscription Services, Customer grants Formstack permission to allow such Systems and Applications to access Customer Data and information about Customer's usage of the Systems and Applications, as appropriate. Unless as specifically set forth in a Sales Order or Product Addenda, Customer expressly acknowledges and agrees that it shall neither submit to the Services, nor use the Services to process any data or information that constitutes classified information or protected health information (PHI) as defined under the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented, the Health Information Technology for Economic and Clinical Health Act ("HIPAA"), and Formstack shall not be liable to Customers, Users, or End Users for any such data or information.

4.3.2 Healthcare Accounts. For applicable Subscription Services, Customer may elect to purchase from Formstack a healthcare solution designed to assist Customer with its obligations under HIPAA, as applicable. To the extent that Customer has purchased a healthcare solution and is providing Formstack with access to PHI, the parties shall process PHI in accordance with Formstack's Business Associate Agreement, which is incorporated by reference. ALL CUSTOMERS USING THE DESIGNATED HEALTHCARE SUBSCRIPTION SERVICES ARE REQUIRED TO ENABLE THE ENCRYPTION FEATURE, IF APPLICABLE. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ANY LOSS THAT CUSTOMER MAY INCUR DUE TO FAILURE TO ENCRYPT OR APPROPRIATELY PROTECT PHI OR AS A RESULT OF CUSTOMER'S OPERATIONAL ERRORS OR LOSS OR USE OF SUCH ENCRYPTION KEY.

4.4 Protection. During the Term, each party shall comply with its respective obligations under applicable data protection and privacy laws, and each party shall maintain a security program that is reasonably designed to protect the security of, and prevent unauthorized access to, Confidential Information and Customer Data. Such security program shall include implementation of appropriate administrative, technical, and physical safeguards. To the extent applicable, the parties shall process personal data in accordance with Formstack's Data Processing Addendum, which is incorporated by reference.

5. PROFESSIONAL SERVICES. To the extent Customer retains Formstack to provide Professional Services, the details related to such Professional Services shall be set forth in a SOW. Formstack will perform the Professional Services in a professional and workmanlike manner.

6. WARRANTIES; LIMITED WARRANTIES; DISCLAIMERS.

6.1 Warranties of the Parties. Each party represents to the other party that it: (i) has validly entered into this Agreement and has the legal power and authority to do so; and (ii) shall comply in all material respects with applicable laws, regulations, rules, orders, and other requirements.

6.2 Limited Warranties.

6.2.1 Formstack Services. During the applicable Term, Formstack warrants to Customer that: (a) Professional Services will be performed in a professional and workmanlike manner; and (b) the Subscription Services will not deviate in a material adverse manner from the applicable Documentation.

6.2.2 Exclusions. The limited warranty set forth in Section 6.2.1 does not apply to issues arising out of or relating to: (a) modification of or damage to the Subscription Services unless such modification was made pursuant to the Documentation; (b) negligence, abuse, misapplication, or misuse of the Subscription Services, including use of the Subscription Services other than as set forth in the Documentation; (c) installation, use, combination, or maintenance of the Subscription Services with any software, product or service not provided by Formstack; (d) a failure to use the most recent version of the Services; (e) failure to comply with any minimum system requirements; or (f) disruption or deficiency in Customer's infrastructure or network used to access the Subscription Services.

6.2.3 Remedial Efforts. Customer must report any deficiencies in the Subscription Services to Formstack in writing within thirty (30) calendar days from the date the Services at issue were performed or provided. In the event of a breach of the warranty in Section 6.2, and as Customer's sole and exclusive remedy, Formstack shall, at its expense, utilize commercially reasonable efforts to repair or replace the Subscription Services or re-perform the Professional Services at issue, as applicable.

6.3 Disclaimers. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 6, FORMSTACK MAKES NO REPRESENTATIONS OR WARRANTIES, AND THE SERVICES ARE PROVIDED "AS IS". FORMSTACK EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, QUIET ENJOYMENT, SATISFACTORY QUALITY AND THOSE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. FORMSTACK MAKES NO WARRANTY ABOUT THE ACCURACY, SECURITY, LOSS OR CORRUPTION OF DATA, OR ABSENCE OF DEFECT RELATING TO THE PRODUCTS OR THE RESULTS OF THE SAME. FORMSTACK DOES NOT WARRANT THAT OPERATION OF THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND GIVEN THE NATURE OF EMAIL DELIVERABILITY, FORMSTACK CANNOT GUARANTEE DELIVERY OF EMAIL TO CUSTOMER'S INTENDED EMAIL ADDRESS(ES) OR AN EMAIL'S TIMELY DELIVERY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES ARE ACCURATE AND SUFFICIENT FOR CUSTOMER'S PURPOSES. FORMSTACK SPECIFICALLY DISCLAIMS RESPONSIBILITY FOR SYSTEMS AND

APPLICATIONS WITH WHICH CUSTOMER MAY UTILIZE THE SERVICES, AND CUSTOMER SPECIFICALLY DISCLAIMS AND WAIVES ANY RIGHTS AND CLAIMS AGAINST FORMSTACK WITH RESPECT TO SUCH SYSTEMS AND APPLICATIONS.

7. TERM AND TERMINATION.

7.1 Term of Agreement. This Agreement commences on the Effective Date and, unless terminated sooner as provided herein, will continue for the period specified in the applicable Sales Order(s) ("Initial Term"). Unless otherwise agreed, the Agreement will automatically renew for successive renewal terms upon the expiration of the Initial Term and any renewal term thereafter (each a "Renewal Term," and collectively with the Initial Term, the "Term"). Each Renewal Term will be the same length as the Initial Term unless otherwise specified by Formstack at the time of renewal.

7.2 Termination. Customers with a monthly subscription may terminate this Agreement by providing Formstack with prior notice of Customer's intention not to renew this Agreement through Formstack's online account management site prior to the end of the applicable Term. If Customer has subscribed to an annual subscription term, either party may terminate this Agreement by providing the other party with thirty (30) days prior written notice of their intention not to renew the Agreement prior to the end of the applicable Term and such termination will be effective at the end of the then-current Term.

7.3 Termination for Breach. This Agreement may be earlier terminated by either party (a) if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days or after receiving written notice of such breach from the other party, except the cure period for non-payment is five business days, or (b) immediately upon written notice, if Customer infringes upon or misappropriates Formstack's intellectual property rights, or if Customer becomes insolvent or ceases to operate in the ordinary course, makes an assignment for the benefit of creditors, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (c) immediately, without notice, for violation of applicable law.

7.4 Effect of Termination. Upon termination or expiration of this Agreement, Customer shall immediately cease use of the Services and will download its Customer End User data prior to such termination or expiration. Following termination, Formstack shall have no obligation with respect to storage of Customer Data and may, in its sole discretion, permanently delete Customer Data in accordance with its internal policies and procedures. Any termination or expiration shall not relieve Customer of its obligation to pay all Fees outlined in its Sales Order(s).

7.5 Surviving Provisions. Upon any expiration or termination of this Agreement, all rights, obligations and licenses of the parties shall cease, except for the provisions of Sections 1 (Definitions), 4.1 (Ownership), 4.2 (Feedback), 7.4 (Effect of Termination), 7.5 (Surviving Provisions), 8 (Fees and Payment Terms), 9 (Confidentiality), 10 (Indemnification), 11 (Limitation of Liability), 12 (General Provisions) and any and all remedies for breach of this Agreement shall survive any termination or expiration.

8. FEES AND PAYMENT TERMS.

8.1 Fees. Customer will pay all Fees specified in the applicable Sales Order(s) and shall provide Formstack with accurate and complete billing information and payment method. Customer grants Formstack and its service providers permission to charge all Fees and any other fees incurred for using the Services. Customer may, at any time, upgrade the Subscription Services. After an upgrade, Customer will be billed for additional Fees due under the upgraded subscription immediately, which may co-term with Customer's current subscription. Formstack reserves the right to increase pricing upon renewal, and all discounts in a Sales Order relate solely to the Services provided during the Initial Term. Services purchased cannot be decreased during the relevant Term. Except as otherwise set

forth in the Sales Order, all invoices shall be due upon receipt by Customers.

8.2 Late Fees; Acceleration. If any invoiced amount is not received by Formstack by the due date, then without limiting Formstack's rights or remedies, the overdue charges may accrue late interest at the rate of 1.5% of the outstanding balance per month or the maximum rate permitted by law, whichever is greater. If any amount owed by Customer under this Agreement is more than thirty (30) days overdue (or seven days for amounts charged to an authorized credit card), Formstack may, without limiting its other rights and remedies, accelerate and require immediate payment of Customer's unpaid Fees and suspend Services. With respect to declined credit card and/or debit card payments, Formstack will give at least five days' prior notice in accordance with this Agreement that Customer's account is delinquent before suspending Services to Customer.

8.3 Taxes. The Fees and all other payments hereunder do not include taxes, duties, tariffs, levies, withholdings and similar assessments of any nature (including without limitation, sales, use, and value-added and withholding taxes), assessable by any jurisdiction whatsoever (collectively, "Taxes"), other than taxes based on Formstack's net income. Customer is responsible for the payment of all Taxes associated with its purchases hereunder. If Formstack has the legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, Formstack will reflect such an amount on the invoice unless Customer provides Formstack with a valid tax exemption certificate.

9. CONFIDENTIALITY.

9.1 Confidentiality Obligations. Each party will use the other party's Confidential Information solely as reasonably required in furtherance of this Agreement. Each Receiving Party will hold in confidence the Disclosing Party's Confidential Information by means that are no less restrictive than those used for its own confidential materials (but not less than reasonable care); this includes limiting access to the Disclosing Party's Confidential Information to Receiving Party employees, contractors, or agents that have a need to know the Disclosing Party's Confidential Information and that are subject to confidentiality obligations that are consistent with those contained herein. The obligations set forth herein will survive for one (1) year after the termination or expiration of this Agreement (except for Confidential Information that is considered a trade secret, which shall be subject to those confidentiality obligations for so long as the Confidential Information remains trade secret).

9.2 Exclusions. Confidential Information shall not include information that: (i) is in, or enters, the public domain without breach of this Agreement by the Receiving Party, (ii) is legally known to by the Receiving Party prior to disclosure by the Disclosing Party, as demonstrated by supporting documentation; (iii) is disclosed to the Receiving Party by a third party under no obligation of confidentiality and without violation of this Agreement; or (iv) is developed independently by receiver without the use or reference of the Confidential Information.

9.3 Permissible Disclosure. The Receiving Party may disclose Confidential Information to the extent required by any applicable law, regulation, or court or governmental order. Before making any such disclosure, the Receiving Party shall, to the extent permitted, provide the Disclosing Party reasonable notice of such disclosure and will work with the Disclosing Party, at the Disclosing Party's expense, in seeking confidential treatment, opposing disclosure, seeking a protective order or other similar protections for the Confidential Information.

10. INDEMNIFICATION.

10.1 Customer Indemnification. Subject to the limitations set forth herein, Customer will defend Formstack, its Affiliates and each of their respective directors, officers, employees, licensors and authorized agents (collectively, "Indemnitees") from and against any Claims arising out of, resulting from, or relating to (a) Customer Data, including its transfer, processing and use as contemplated by this Agreement; (b) Customer's (or its Affiliate's, User's, or End User's) breach of this Agreement; (c) Customer's (or its Affiliate's, User's, or End User's) use of the Services in violation of third party rights, including any intellectual property or privacy rights or any applicable laws; (d)

Customer's (or its Affiliate's, User's, or End User's) access or use of the Services, Documentation, or proprietary or intellectual property of Formstack, and shall indemnify and hold the Indemnitees harmless from any and all resulting Losses.

10.2 Indemnification Procedure. Formstack shall notify Customer of any Claims for which it seeks indemnification pursuant to Section 10.1. Formstack shall reasonably cooperate with Customer at Customer's sole cost and expense. Customer shall immediately take control of the defense and investigation of such Claim and shall employ counsel approved by Formstack, such approval not to be unreasonably withheld, to defend the same, at Customer's sole cost and expense. Formstack's failure to timely notify Customer under this Section 10.2 will not relieve Customer of its obligations under this Section 10 except to the extent Customer is materially prejudiced due to such failure. Formstack may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. Customer shall not settle any Claim without Formstack's prior written consent.

11. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (I) IN NO EVENT WILL EITHER PARTY, ITS AFFILIATES, DIRECTORS, EMPLOYEES, OR AGENTS HAVE ANY LIABILITY, CONTINGENT OR OTHERWISE, FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, STATUTORY OR EXEMPLARY DAMAGES, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, STATUTE, INDEMNITY OR OTHERWISE) UPON WHICH ANY SUCH LIABILITY IS BASED; AND (II) THE AGGREGATE LIABILITY OF FORMSTACK, ITS AFFILIATES, DIRECTORS, EMPLOYEES, AND AGENTS SHALL BE LIMITED TO TERMINATION OF THIS AGREEMENT AND DAMAGES NOT TO EXCEED ONE HUNDRED DOLLARS (\$100) USD. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR PERSONAL INJURY OR DEATH, SUCH THAT THE ABOVE LIMITATIONS MAY NOT APPLY. IN THESE JURISDICTIONS, LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

12. GENERAL PROVISIONS

12.1 Export. The Services that Formstack provides under this Agreement are subject to export laws, rules and regulations of the United States and other jurisdictions. Customer warrants that it will comply with all export laws, rules, and regulations in regard to its export, import, and use of the Services and represents that it (and its representatives and Users) are not sanctioned or prohibited from doing business with the United States or any other applicable country. Customer agrees to indemnify and hold Formstack harmless from any liability for Customer's violation of applicable export control laws.

12.2 Independent Contractors. The parties are independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party or both parties as joint venturers or partners for any purpose.

12.3 Assignment. This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent (which shall not be unreasonably withheld); provided, however, without consent, either party may assign this Agreement to another party in connection with a change of control, acquisition, or sale of all or substantially all of its assets. This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto. Any attempted assignment in violation of this Section 12.3 is void.

12.4 Entire Agreement; Modifications. This Agreement, the Acceptable Use Policy, Sales Order(s), Product-Specific Addenda (additional terms applicable to specific Subscription Services, which supersede the terms set forth herein

as to the relevant Subscription Services), and any agreement incorporated herein by reference constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings or agreements between the parties with respect to such subject matter. Any terms contained in any other documentation provided by Customer to Formstack is void and will not become part of the Agreement or bind the parties. In the event of any conflict between the Sales Order and the Agreement, the Agreement shall take precedence, unless as expressly set forth in the Sales Order. There are no representations, agreements, arrangements, or understandings between the parties relating to the subject matter of this Agreement that are not fully expressed herein. Customer agrees that its purchase is not contingent on the delivery of any future functionality or features. All waivers and modifications must be in a writing that both identifies itself as a waiver or modification to this Agreement and is signed by both parties.

12.5 Waiver. The parties may waive a breach of this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay (i) in exercising any right or remedy, or (ii) in requiring the satisfaction of any condition, (iii) under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other party.

12.6 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

12.7 Choice of Law. This Agreement shall be governed by the laws of the State of Delaware, and the parties agree that the venue of any action arising hereunder shall be exclusively in state and federal courts located in New Castle County, Delaware. Neither the United Nations Convention on Contracts for the International Sale of Goods nor any enactment of the Uniform Computer Information Transactions Act shall apply to this Agreement.

12.8 Force Majeure. Neither party is responsible for nonperformance or delay in performance of its obligations (other than payment of Fees) due to causes, reason, event or circumstances beyond its reasonable control, such as acts of God or nature, strike, blockade, war, act of terrorism, riot, Internet outages, failure of service providers (including cloud service providers), failure or diminishment of power or telecommunications or data networks or services, pandemic, or refusal of a license by a government agency, or any other cause, reason, event or circumstances whether or not similar to those listed in this Section 12.8.

12.9 Construction. Paragraph headings are for convenience and shall have no effect on interpretation. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not be applied in the construction or interpretation of this Agreement. The words "include" and "including" and variations thereof, will not be deemed to be terms of limitation, but deemed to be followed by the words "without limitation."

12.10 Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

12.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which, taken together, shall be deemed to constitute the entire Agreement and may be used as evidence of the execution of the Agreement to the same extent as that of an original signature.

12.12 Notices. Any notices or other communications required in this Agreement (aside from billing requests or questions) will be in English and in writing and will be deemed to have been

duly given to a party: (a) upon receipt, if delivered by hand or sent by nationally recognized overnight delivery service; (b) one business day following the deposit of such notice with a recognized overnight delivery service; (c) upon receipt, if sent by certified or registered mail, return receipt requested. Notice to Formstack must be sent to Formstack: Formstack, LLC, Attn: General Counsel, 11671 Lantern Road, Suite 300, Fishers, IN 46038 with a copy sent to: generalcounsel@formstack.com. Notice to Customer must be sent to the contact mailing address or email address on the most recent Sales Order.

12.13 Federal Government End Use Provisions. If Customer is a U.S. federal government department or agency or contracting on behalf of the same, the Subscription Services are a "Commercial Item" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Subscription Services are licensed to Customer with only those rights provided under this Agreement.

12.14 Controlling Language. This Agreement has been prepared and executed in the English language only, which language will be controlling in all respects. Any translations of the provisions of this Agreement into any other language are for reference only and will have no legal or other effect. Any notice that is required or permitted to be given by one party to the other under this Agreement must be in the English language and in writing. All proceedings related to this Agreement will be conducted in the English language.

12.15 Dispute Resolution. Prior to initiating any claim or proceeding under, arising out of or in connection with the Agreement, the parties will make a good faith effort to resolve the underlying dispute. Such good faith effort will include: (a) elevating the issue to management personnel of each party who have the power to settle the dispute on behalf of that party within twenty (20) business days; and (b) reasonably sharing relevant, non-privileged documents, books and records and other materials, as reasonably requested, in connection with the dispute. Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of, related to or connected with the use of the Services must be filed within one year after such Claim arose.

12.16 Arbitration. For Claims outside of the United States. If you reside outside the United States or your business is located outside the United States, you agree that the Members shall attempt to settle any dispute or difference between or among them amicably pursuant to Section 12.15. Should the parties fail to reach a solution through such negotiations, any Claim arising out of or in connection with this Agreement, including any question regarding its existence, validity, implementation, interpretation or termination, shall be determined by arbitration administered by the International Chamber of Commerce ("ICC") in accordance with its International Arbitration Rules (the "Rules"), which Rules are deemed to be incorporated by reference into this clause. Within ten (10) calendar days of service of a demand for arbitration, the number of arbitrators shall be one and appointed by mutual consent of the parties. In case the parties disagree on the appointment for more than forty-five (45) days after the commencement of the arbitration, the sole arbitrator will be appointed by the ICC per the Rules. Any arbitrator so appointed by the

ICC will be of a nationality different than that of any party (the "Arbitrator").

Discovery shall be limited, and the parties shall rely upon the IBA Rules on the Taking of Evidence in International Arbitration. Depositions, if any, are limited to one (1) deposition for fact witnesses, plus a deposition of each expert identified, all limited to four hours per deposition. Judgment may be entered in a court having jurisdiction thereof.

The parties agree that all information concerning the fact, substance or result of any such Dispute shall constitute Confidential Information and shall not be disclosed except to the extent necessary to enforce the arbitration award or as otherwise required by law. To the fullest extent permitted by applicable law, no arbitration proceeding under this Agreement shall be joined to an arbitration involving any other party subject to this Agreement, whether through class action proceedings or otherwise. This provision shall not prevent a party from seeking injunctive relief from a Delaware federal or state court to preserve the status quo or preserve evidence pending arbitration.

PRODUCT-SPECIFIC TERMS

FORMS

Payment Card Industry Data Security Standard ("PCI DSS") Compliance. Customer shall enter or upload credit card information to the "Credit Card" field only and is prohibited from entering credit card information in any other field. To the extent Customer processes, stores, or transmits cardholder data information using the Subscription Services, the parties will comply with its responsibilities under PCI DSS.

SIGN

Customer agrees to comply with the following:

1. Individuals registering for an account and using the Sign Subscription Services must be 18 years of age or older.
2. The Sign Subscription Services facilitate the execution of eContracts between the parties. Nothing in these terms may be construed to make Formstack a party to any eContract processed through the Sign Subscription Services.
3. Formstack assumes no liability or responsibility for a party's failure or inability to electronically sign any eContract.
4. Certain types of agreements and documents may be excepted from electronic signature laws (e.g., wills and agreements pertaining to family law) or may be subject to specific regulations promulgated by various government agencies regarding electronic signatures and electronic records. Formstack is not responsible or liable to determine whether any particular eContract is subject to an exception to applicable electronic signature laws, whether it is subject to any particular agency promulgations, or whether it can be legally formed by electronic signatures.

5. Customer is solely responsible for determining the length of time it shall retain or store (outside of Formstack's Services) contracts, documents, and other records under any applicable laws, regulations, legal or administrative agency processes. Further, Customer is solely responsible for providing relevant eContracts copies of the same, other documents to any third parties.
6. Certain consumer protection or similar laws or regulations may impose special requirements with respect to electronic transactions involving one or more "consumers," such as (among others) requirements that the consumer consent to the method of contracting and/or that the consumer be provided with a copy, or access to a copy, of a paper or other non-electronic, written record of the transaction. Formstack does not and is not responsible to: (i) determine whether any particular transaction involves a "consumer;" (ii) furnish or obtain any such consents or determine if any such consents have been withdrawn; (iii) provide any information or disclosures in connection with any attempt to obtain any such consents; (iv) provide legal review of, or update or correct any information or disclosures currently or previously given; (v) provide any such copies or access to consumer or otherwise, except as expressly provided herein; or (vi) otherwise comply with any such special requirements.

FORMS FOR SALESFORCE

1. "Software" shall mean the online form creation and data collection software known as Formstack for Salesforce and provided by Formstack used to transmit data collected using Forms to and from Customer's Salesforce account.
2. The following shall replace Section 2.1 above:
Subject to Customer's compliance with the terms and conditions of the Agreement, including payment of all applicable fees, Formstack hereby grants to Customer for its internal business purposes a limited, revocable, non-exclusive, non-transferable, non-sublicensable right during the Term to either: (i) (a) install, execute, and use, or permit Users to install, execute, and use, in object code form only, the Software on Customer-provided infrastructure or (b) access and use the Subscription Services and Documentation for Customer's own internal business purposes; and (ii) access, display, and use the Documentation.
3. If Customer is a NativeCloud user, data collected through Customer's Forms is transmitted to Customer's Salesforce account and is stored at and accessed by the Services from Customer's Salesforce account.