

November 5<sup>th</sup>, 2020

## Retailer Terms of Service

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING “ACCEPTED AND AGREED TO,” RETAILER AGREES TO THESE TERMS AND CONDITIONS.**

These Retailer Terms of Service constitute an agreement (this “Agreement”) by and between Forage Technology Corporation a Delaware corporation whose principal place of business is 459, 23rd Street, Apt 404 Oakland, CA 94612 (“Vendor”) and the corporation, LLC, partnership, sole proprietorship, or other business entity executing this Agreement (“Retailer”). This Agreement is effective as of the date Retailer clicks “Accepted and Agreed To” (the “Effective Date”). Retailer’s use of and Vendor’s provision of Vendor’s System (as defined below in Section 1.14) are governed by this Agreement.

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON SIGNING ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON EXECUTING THIS AGREEMENT ON CUSTOMER’S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS.

**1. DEFINITIONS.** The following capitalized terms will have the following meanings whenever used in this Agreement.

- 1.1. “Customer Data” means data in electronic form input or collected through the Services by or from Retailer or the Users including without limitation information related to Retailer’s clients or potential clients such as their Payment Credentials as well as information related to payment or payment related events facilitated, processed or otherwise recorded by Retailer.
- 1.2. “Derived Data” means (i) any data that is derived by Vendor while processing Customer Data and (ii) Customer Data that is aggregated and anonymized or sufficiently different from Customer Data such that Customer Data cannot be identified from analysis or further processing of such derived data.
- 1.3. “Consulting Services” means the consulting services detailed in the SOW.
- 1.4. “Documentation” means Vendor’s standard documentation related to use of the Services.
- 1.5. “EBT Requirements” means the requirements set by the US Department of Agriculture Food and Nutrition Services (“FNS”) and any state or local requirements governing online purchases of households benefiting from the Electronic Benefits Transfer (“EBT”) system under the Supplemental Nutrition Assistance Program or any other similar program adopted by the FNS, including without limitation any requirements applicable to payments using EBT benefits and store eligibility requirements, as such requirements may be updated from time to time.
- 1.6. “EBT Transaction” means a transaction subject to the EBT Requirements.
- 1.7. “Excluded Data Laws” means statutes, instruments, common law, regulations, directives, codes of practice, decisions, recommendations and the like (whether in the United States, the European Union or any other relevant jurisdiction) with which the collector or processor of Customer Data is legally obliged to comply concerning the protection and/or processing of specific categories of personal data, which imposes additional obligations on the collector or processor of such personal

November 5<sup>th</sup>, 2020

data, including without limitation the US Health Information Portability and Accountability Act and the US Children's Online Privacy Protection Act, excluding data laws of general application, such as the European General Data Protection Regulation and the California Consumer Privacy Act.

- 1.8. "Feedback" means any suggestion, idea, enhancement request, or recommendation for improving or otherwise modifying any of Vendor's Services provided by the Retailer or a User, excluding any Customer Data and any Confidential Information of Retailer.
- 1.9. "Marks" means trademarks, service marks, logos, symbols, and trade dress.
- 1.10. "Primary Contact" means an employee designated by the Retailer who shall act as the sole point of contact with the Vendor.
- 1.11. "Services" means (i) Consulting Services, and (ii) services using the System as detailed in the SOW and the SLA, including any improvements, customizations or developments thereto, but for purposes of clarification, excluding any Customer Data and any Confidential Information of Retailer.
- 1.12. "SLA" means Vendor's standard service level and support terms, available at [www.joinforage.co/service-level-agreement](http://www.joinforage.co/service-level-agreement).
- 1.13. "SOW" means the Vendor's statement of work executed by the parties, which includes the description of the Services, as well as the applicable payment schedule.
- 1.14. "System" means Vendor's payment service intended (i) to facilitate retailers' collection of payments from their customers who are EBT recipients and (ii) to allow EBT recipients to store their EBT card, credit card or debit card credentials ("Payment Credentials") for use across websites that use the System, including any improvements, customizations or developments.
- 1.15. "Term" is defined in Section 11.1 below.
- 1.16. "Usage Data" means any data reflecting access or use of the Services by the Retailer or a User, to the exclusion of any Customer Data.
- 1.17. "User" means any individual who uses the Services on Retailer's behalf or through Retailer's account or passwords, whether authorized or not.
- 1.18. "Vendor Associates" means Vendor's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.

## **2. SERVICES.**

- 2.1. Services. During the Term, Vendor will provide Retailer with the Services.
- 2.2. Retailer's Duties.
  - (a) Retailer will reasonably cooperate with Vendor in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Vendor may reasonably request to assist in its provision of the Services.

November 5<sup>th</sup>, 2020

- (b) Retailer shall use commercially reasonable best efforts in completing all tasks assigned to its personnel under the SOW.
- (c) In order for Vendor to deliver the Services, Retailer must provide Customer Data. The Customer Data may be delivered through the System.
- (d) Retailer undertakes to exclusively use the Services for processing any online purchase involving an EBT transaction, including where such EBT transaction is combined with a non-EBT transaction.

- 2.3. Documentation: Retailer may reproduce and use the Documentation solely as necessary to support Users' use of the Services.
- 2.4. Service Suspensions. Vendor shall use commercially reasonable best efforts to prevent any interruption to the Services. Notwithstanding the foregoing, Vendor may reasonably suspend Retailer's access to the Services: (i) for maintenance, or (ii) while Retailer is in breach of this Agreement. Vendor will use commercially reasonable best efforts to give Retailer prior written notice of suspension and to minimize any interference with Retailer's full use of the Services.
- 2.5. Service Levels and Support. Vendor shall provide the Services and support as specified in the SLA.
- 2.6. Documentation. Retailer may reproduce and use the Documentation solely as necessary to support Users' use of the Services.
- 2.7. Service Revisions. Vendor may revise the features and functions of the Services at any time, provided that if any such revision to the Services materially reduces the features or functionality used by Retailer, Retailer may within 30 days of notice of the revision terminate this Agreement without cause.
- 2.8. Primary Contact. Retailer shall designate a Primary Contact, who shall have the responsibilities set out in the SOW and who shall also be responsible for reporting any failure under Section 2.5. or more generally for reporting any issue in connection with the Services or the Agreement. Retailer may change the Primary Contact by providing written notice to Vendor.

### **3. PAYMENT.**

- 3.1. Subscription Fees. Retailer shall pay Vendor the fees set forth in the SOW (the "Subscription Fee") in U.S dollars. Vendor's invoices will be emailed to the Retailer and are due within 30 days of the date they are emailed unless the invoice is disputed in good faith, provided that any payment disputed shall be due within five (5) days of resolution of such dispute.
- 3.2. Taxes. Amounts due under this Agreement are payable to Vendor without deduction and are net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value added tax withheld at the source. If applicable law requires withholding or deduction of such taxes or duties, Retailer shall separately pay Vendor the withheld or deducted amount. However, the prior two sentences do not apply to Vendor's payroll taxes or taxes based on Vendor's net income.

### **4. CUSTOMER DATA & PRIVACY.**

November 5<sup>th</sup>, 2020

- 4.1. Risk of Exposure and Data Security. Retailer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the Services, Retailer assumes such risks. Vendor agrees to conform to commercially reasonable industry security requirements, but Vendor offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.
- 4.2. Data Accuracy. Vendor will have no responsibility or liability for the accuracy, reliability and appropriateness of data uploaded by Retailer or its Users, including without limitation Customer Data.
- 4.3. Excluded Data. Retailer represents and warrants that Customer Data does not and will not include, and Retailer has not and shall not upload or transmit to Vendor's computers or other media, any data ("Excluded Data") regulated pursuant to the Excluded Data Laws. CUSTOMER RECOGNIZES AND AGREES THAT: (a) VENDOR HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) VENDOR'S SYSTEMS ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.
- 4.4. Derived and Usage Data. Notwithstanding the provisions above of this Article 4, Vendor shall be the owner of any Derived Data and Usage Data and shall have the right to use, reproduce, sell, publicize, or otherwise exploit Derived Data and Usage Data in any way, in its sole discretion.

## **5. RETAILER'S RESPONSIBILITIES & RESTRICTIONS.**

- 5.1. Acceptable Use. Retailer shall not and will not permit any third party to: (a) use the Services for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Services; (b) provide System passwords or other log-in information to any third party; (c) share non-public Services features or content with any third party; (d) access the Services in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Services, or to copy any ideas, features, functions or graphics of the Services; (e) engage in web scraping or data scraping on or related to the Services, including without limitation collection of information through any software that simulates human activity or any bot or web crawler; or (f) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the System or any related software, documentation or data related to the System (*provided*, that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the System; except as expressly permitted herein. In the event that it suspects any breach of the requirements of this Section 5.1, including without limitation by Users, Vendor may suspend Retailer's access to the Services without advanced notice, in addition to such other remedies as Vendor may have. Vendor shall be free to take any action it sees fit against Retailer or any User for violating this Section 5.1.
- 5.2. Unauthorized Access. Retailer shall take reasonable steps to prevent unauthorized access to the Services, including without limitation by protecting its passwords and other log-in information. Retailer shall notify Vendor immediately of any known or suspected unauthorized use of the or breach of its security and shall use best efforts to stop said breach.
- 5.3. Compliance with Laws. In its use of the Services, Retailer shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and

November 5<sup>th</sup>, 2020

other laws applicable to the protection of Customer Data.

- 5.4. User Access. Retailer is responsible and liable for: (a) Users' use of the Services, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of this Agreement applicable to Retailer; and (b) any use of the Services through Retailer's account, whether authorized or unauthorized.
- 5.5. Compliance with EBT Requirement. Retailer shall be solely responsible for compliance with EBT and undertakes to maintain policies and procedures in place to ensure continued compliance.

## **6. IP & FEEDBACK.**

- 6.1. IP Rights to the Services and Retailer's Feedback. Vendor alone (and its licensors, where applicable) retains all right, title, and interest in and to the Services, the Feedback, the Derived Data and the Usage Data, including without limitation all software used to provide the Services, the Feedback, the Derived Data and the Usage Data and all graphics, user interfaces, logos, and trademarks reproduced through the Services. Retailer recognizes that the Services, the Feedback, the Derived Data and the Usage Data, their components and the Feedback are protected by copyright and other laws and agrees not to copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement.
- 6.2. License to Use the Services. Vendor hereby grants Retailer during the Term, a limited, non-exclusive, non-transferable (other than pursuant to Section 12.4 of this Agreement), non-sublicensable license to use the Services in compliance with the terms of this Agreement.
- 6.3. IP Rights to Customer Data. Retailer and its licensors shall (and Retailer hereby represents and warrants that they do) have and retain all right, title, and interest in and to Customer Data.
- 6.4. License to Use Customer Data. Retailer, on behalf of itself and its suppliers and licensors (as applicable) hereby grants Vendor during the Term a limited, non-exclusive, non-transferable (other than pursuant to Section 12.4 of this Agreement), non-sublicensable (other than to subcontractors bound by confidentiality obligations at least as restrictive as those set forth herein, for whose actions Vendor remains responsible) license to use, view, copy, reformat, distribute, display and analyze the Customer Data solely for purposes of providing and improving the Services.
- 6.5. Retailer Marks; Marketing. Retailer hereby grants to Vendor a worldwide, non-exclusive, non-transferable license to use and display all Marks provided by Retailer to Vendor for inclusion in the Services solely for the purpose of Vendor's provision of the Services, as selected by Retailer from time to time. Vendor is permitted to disclose that Retailer is one of its customers to any third-party at its sole discretion, and, to place Retailer's name and logo on its website and marketing materials for this purpose, subject to compliance with any logo or branding guidelines provided by Retailer.

## **7. CONFIDENTIAL INFORMATION.**

- 7.1. "Confidential Information" refers to any confidential information shared by one Party with the other in connection with its business or clients and reasonably regarded as being of a confidential nature. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the receiving Party's possession at the time of disclosure; (ii) is independently developed by the

November 5<sup>th</sup>, 2020

receiving Party without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the receiving Party's improper action or inaction; or (iv) is approved for release in writing by the disclosing Party. Retailer is on notice that the Confidential Information may include Vendor's valuable trade secrets.

- 7.2. Nondisclosure. Neither Party will disclose any Confidential Information to any third party other than to its employees or contractors in performance of this Agreement, without the express written consent of the other Party. Each Party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Each Party shall promptly notify the other Party of any misuse or misappropriation of Confidential Information that comes to its attention and take reasonable steps to contain and mitigate against the harm caused by such breach.
- 7.3. Use of Confidential Information. Either Party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. The receiving Party shall give the disclosing Party prompt notice of any such legal or governmental demand, to the extent allowable by law, and reasonably cooperate with the disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at the disclosing Party's expense.
- 7.4. Injunction. The Parties agree that breach of this Article 7 would cause the non-breaching Party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the non-breaching Party will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- 7.5. Termination & Return. Upon termination of this Agreement, and subject to any contrary obligations under applicable laws, the Parties shall return or destroy all copies of Confidential Information of the other Party in their possession.
- 7.6. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), the Parties are on notice and acknowledge that, notwithstanding the foregoing or any other provision of this Agreement:
- (a) *Immunity*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
  - (b) *Use of Trade Secret Information in Anti-Retaliation Lawsuit*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

## **8. REPRESENTATIONS & WARRANTIES.**

- 8.1. From Vendor. Vendor represents and warrants that: (a) it has the full right and authority to enter

November 5<sup>th</sup>, 2020

into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) the performance of its obligations and/or exercise of its rights hereunder will not violate or conflict with (1) any agreements, contracts or other arrangements to which it is a Party, or (2) any applicable law and/or regulation, (c) the execution of this Agreement and the performance by it of the transactions contemplated hereby have been duly authorized by all necessary corporate action and any other consents required to be obtained by it have been obtained, (d) it will provide the Services in a professional manner consistent with the levels of performance that would be reasonably expected of similar companies, (e) it will comply with all applicable laws and regulations, including, without limitation, the US Foreign Corrupt Practices Act, and all other laws and regulations prohibiting corruption and bribery, and (f) it will not, directly or indirectly make or give, offer or promise to make or give, or authorize the making or giving of any payment, gift, or other thing of value or advantage to any person or entity for the purpose of wrongfully influencing decisions or for any other purpose that is otherwise unlawful.

8.2. From Retailer. Retailer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) the performance of its obligations and/or exercise of its rights hereunder (c) the execution of this Agreement and the performance by it of the transactions contemplated hereby have been duly authorized by all necessary corporate action and any other consents required to be obtained by it have been obtained, (d) it will comply with all applicable laws and regulations, including, without limitation, the US Foreign Corrupt Practices Act, and all other laws and regulations prohibiting corruption and bribery, (e) it will not, directly or indirectly make or give, offer or promise to make or give, or authorize the making or giving of any payment, gift, or other thing of value or advantage to any person or entity for the purpose of wrongfully influencing decisions or for any other purpose that is otherwise unlawful, and (f) before processing any EBT transactions on the System, it will be a "SNAP Authorized Store" (as defined under the EBT Requirements) and will comply at all times with the EBT Requirements, including without limitation any duty to register, report, seek authorizations or renewal thereof.

8.3. Warranty Disclaimers. Except to the extent set forth in the Agreement, RETAILER ACCEPTS THE SERVICES "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) VENDOR HAS NO OBLIGATION TO INDEMNIFY OR DEFEND RETAILER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL PERFORM WITHOUT INTERRUPTION OR ERROR; (c) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SERVICES ARE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE, (d) VENDOR DOES NOT WARRANT OR REPRESENT THAT THE SERVICES WILL COMPLY WITH EBT REQUIREMENTS OR ANY OTHER APPLICABLE REGULATORY OR LEGAL REQUIREMENTS. AS BETWEEN VENDOR AND RETAILER, RETAILER AGREES TO SOLE RESPONSIBILITY FOR ANY COMPLIANCE WITH EBT REQUIREMENTS AND ANY OTHER APPLICABLE REGULATORY OR REGULATORY REQUIREMENTS.

## **9. INDEMNIFICATION.**

- 9.1. Retailer shall defend, indemnify, and hold harmless Vendor and the Vendor Associates against any third party claim, suit, or proceeding arising out of or related to Retailer's alleged or actual use of, misuse of, or failure to use the Services, including without limitation: (a) claims by Users, Retailer's employees, or Retailer's own customers; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Customer Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by the Retailer Marks, written material, images, logos or other content provided by Retailer to Vendor through the Services, including without limitation by Customer Data; (d) claims that use of the Services through Retailer's account harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising; (e) claims that the use of the Services breaches the EBT Requirements or any other regulatory requirement governing such use and (f) any breach of Section 8.2(f) by the Retailer. The foregoing obligations do not apply to the extent such claims are caused by Vendor's gross negligence, fraud or intentional misconduct. Retailer's obligations set forth in this Section 9.1 include retention and payment of attorneys and payment of court costs, as well as settlement at Retailer's expense and payment of judgments. Vendor will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations.
- 9.2. Vendor shall defend, indemnify, and hold harmless Retailer against third party claim, suit, or proceeding arising out of or related to any infringement or violation of intellectual property right by Vendor's Services provided Vendor is promptly notified of any and all threats, claims, proceedings related thereto and given reasonable assistance and sole control over the defense and settlement thereof. Vendor's obligations set forth in this Section 9.2 include retention and payment of reasonable attorney fees and payment of court costs, as well as settlement at Vendor's expense and payment of judgments. The foregoing obligations do not apply (i) to the extent such claims are caused by Retailer's gross negligence, fraud or intentional misconduct, or (ii) with respect to portions or components of the Services (a) not created by or on behalf of Vendor, (b) resulting in whole or in part from Vendor's compliance with Retailer's specifications, if such claim, suit or proceeding would have been avoided without such compliance with Retailer specifications, (c) that are modified by Retailer or any third party not under the control of Vendor, where the alleged infringement arises out of such modification, (d) combined with other products, processes or materials not approved in writing by Vendor (including, without limitation, Customer Data) where the alleged infringement arises out of such combination, (e) where Retailer continues allegedly infringing activity after being notified in writing thereof or after being informed in writing of modifications that would have avoided the alleged infringement, and/or (f) where Retailer's use of the Services is in violation of this Agreement.

## **10. LIMITATION OF LIABILITY.**

- 10.1. Dollar Cap. VENDOR'S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE TO VENDOR IN THE PREVIOUS TWELVE-MONTH PERIOD UNDER SECTION 3 HEREOF
- 10.2. Excluded Damages. Except with regard to breaches of Article 7 (*Confidential Information*), IN NO EVENT WILL VENDOR BE LIABLE FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY

November 5<sup>th</sup>, 2020

CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

10.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 10 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF VENDOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF RETAILER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 10, Vendor's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Vendor's liability limits and other rights set forth in this Article 10 apply likewise to Vendor's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

## **11. Term & Termination.**

11.1. Term. The term of this Agreement (the "Term") will commence on the Effective Date and continue for twelve (12) months (the "Initial Term"). Thereafter, the Term will renew for successive twelve (12) month periods, unless either Party refuses such renewal by written notice thirty (30) or more days before the renewal date.

11.2. Termination for Cause. Either Party may terminate this Agreement for the other's material breach by written notice specifying in detail the nature of the breach, effective in thirty (30) days unless the other Party first cures such breach, or effective immediately if the breach is not subject to cure. For purposes of clarification, Retailer's breach of Section 8.2 shall constitute a material breach of the Agreement.

11.3. Effects of Termination. Upon termination of this Agreement:

- (a) Retailer shall cease all use of the Services, and delete, destroy, or return all copies of the Documentation in its possession or control;
- (b) all rights and licenses granted hereunder to Retailer will immediately cease; and
- (c) all rights and licenses granted hereunder to Vendor will immediately cease.

11.4. Survival. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Retailer to pay fees incurred before termination; (b) Articles and Sections 6 (IP & Feedback), 7 (Confidential Information), 8.3 (Warranty Disclaimers), 9 (Indemnification), and 10 (Limitation of Liability); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

## **12. MISCELLANEOUS.**

12.1. Independent Contractors. The parties are independent contractors and shall so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.

12.2. Notices. Vendor may send notices pursuant to this Agreement to Customer's email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to Vendor's email contact point: [support@joinforage.co](mailto:support@joinforage.co), and such notices will be deemed received 24 hours after they are sent.

November 5<sup>th</sup>, 2020

Moreover, each Party may send notices in writing to the address of the other Party or such other addresses as such Party may designate by like notice from time to time and such notice will be deemed to have been duly given when received, if personally delivered; when receipt is confirmed, if transmitted by facsimile, and upon receipt, if sent by certified or registered mail (return receipt requested), or postage prepaid.

- 12.3. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.
- 12.4. Assignment & Successors. Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, however, that a Party may, upon prior written notice to the other Party and without the consent of the other Party, assign or otherwise transfer this Agreement to any of its affiliates or to an entity with or into which it is merged or consolidated or to which it sells its stock or other equity interests or all or substantially all of its assets or to the surviving entity of any similar transaction. Any other assignment or transfer in violation of this Agreement will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties' permitted successors and assigns.
- 12.5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 12.6. No Waiver. Neither Party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 12.7. Choice of Law & Jurisdiction. This Agreement and all claims arising out of or related to this Agreement will be governed solely by the internal laws of the State of California including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The Parties consent to the personal and exclusive jurisdiction of the federal and state courts of San Francisco, California. This Section **Error! Reference source not found.** governs all claims arising out of or related to this Agreement, including without limitation tort claims.
- 12.8. Conflicts. In the event of any conflict between this Agreement, the SLA and the SOW or any agreement related hereto, the terms of this Agreement will govern unless such conflicting terms are explicitly superseded in the SLA, SOW or such other agreement
- 12.9. Technology Export. Customer shall not: (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export any software provided by Vendor or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations.

November 5<sup>th</sup>, 2020

Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the System in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).

- 12.10. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 12.11. Amendment. Vendor may amend this Agreement from time to time by posting an amended version at its Website and sending Customer written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the "Proposed Amendment Date") unless Customer first gives Vendor written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer's next Term following the Proposed Amendment Date (unless either party first terminates this Agreement pursuant to Article 11, *Term & Termination*). Customer's continued use of the Service following the effective date of an amendment will confirm Customer's consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party.

