



## Accessing AmeriLyzer

- **Complete and sign the 10-page the AmeriLyzer Access Agreement.**
- **Return the entire agreement to your marketing organization.**
- **Your marketing organization will submit your information with the AmeriLyzer on-boarding team.**
- **Watch for an email invitation from the AmeriLyzer on-boarding team.**
- **Follow the instructions to set up your user name and password.**
- **Enjoy using AmeriLyzer.**



**AMERILYZER ACCESS AGREEMENT**

<b>Personal Information for Authorized User</b> (the individual producer or the principal, if the producer is an entity):			
First Name:	Middle Name:	Last Name:	Suffix (if any):
Street Address ( <i>must be physical address</i> ):			
City:	State:	Zip:	
Last Four Digits of Social Security Number:	Phone Number:		
Email Address:			
National Producer Number (NPN):			
<b>Your National Producer Number is required to process your paperwork. If you do not know your National Producer Number, you can look it up at the National Insurance Producer Registry (NIPR).</b>			
I am contracting as a(n): <input type="checkbox"/> Individual / Sole Proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership/LLC			
<b>Entity Name, State where Organized and Federal Tax ID (if producer is a corporation or other legal entity):</b>			
States where I will be conducting business:			
Carriers contracted/appointed with (attach additional sheets if necessary):			
I hold the following insurance licenses: <input type="checkbox"/> Life & Health <input type="checkbox"/> Life, Health & Variable Annuity			
I hold the following securities licenses: <input type="checkbox"/> Series 6 <input type="checkbox"/> Series 7 <input type="checkbox"/> Series 65 <input type="checkbox"/> Other:			
I certify that have E&O coverage of at least \$1 million aggregate & \$1 million per occurrence <input type="checkbox"/>			
Name of E&O Carrier	Renewal Date:		
Name of IMO/Recruiter:			
By signing below, I certify that I have read, understand, and agree to comply with and be bound by all terms and conditions in the AmeriLyzer Access Agreement attached hereto, am authorized to sign as or on behalf of Authorized User, and that I fulfill all requirements set forth therein. By signing below, I further certify that my responses and information provided in this AmeriLyzer Access Agreement are true, correct and complete.			
Effective Date: _____, 2017			
Signature of Authorized User: _____			
Printed Name of Authorized User: _____			
Title (if Authorized User is a Company): _____			

## TERMS AND CONDITIONS

This AmeriLyzer Access Agreement, including these terms and conditions, (this “**Agreement**”), is a binding agreement between **AMERILIFE FINANCIAL ADVISORS LLC**, a Delaware limited liability company, having a principal place of business at 2650 McCormick Drive, Suite 300L, Clearwater, FL 33759, (“**AmeriLife**”) and the Person identified on the initial page herein (“**Authorized User**”).

AMERILIFE PROVIDES THE AUTHORIZED USER ACCESS TO THE AMERILYZER<sup>SM</sup> SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT AUTHORIZED USER ACCEPTS AND COMPLIES WITH THEM. BY EXECUTING THIS AGREEMENT YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT AUTHORIZED USER IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF AUTHORIZED USER IS A CORPORATION OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF AUTHORIZED USER AND BIND AUTHORIZED USER TO ITS TERMS. IF AUTHORIZED USER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, AMERILIFE WILL NOT AND DOES NOT LICENSE THE AMERILYZER TO AUTHORIZED USER AND YOU MUST NOT ACCESS OR OTHERWISE USE THE AMERILYZER OR ANY RELATED DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR THE AUTHORIZED USER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO LICENSE IS GRANTED TO THE AMERILYZER OR ANY OTHER SOFTWARE (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE), NO ACCESS TO THE AMERILYZER IS PERMITTED UNDER THIS AGREEMENT EXCEPT AS EXPRESSLY PROVIDED HEREIN, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT CONCERNING ANY SOFTWARE THAT AUTHORIZED USER DID NOT ACQUIRE LAWFULLY.

**NOW, THEREFORE**, in consideration of the representations, warranties, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to become legally bound, agree as follows:

**Section 1. Definitions.** For purposes of this Agreement, the following terms have the following meanings:

“**Access Fees**” means the access fees, including all taxes thereon, paid or required to be paid by Authorized User for the access arrangement granted under this Agreement and as set forth in more detail on Annex 1.

“**AmeriLife**” has the meaning set forth in the preamble.

“**AmeriLife Hierarchy**” means collectively, those subagents that from time to time have an arrangement with or are contracted with AmeriLife or any subsidiary of AmeriLife Group, LLC and for which AmeriLife or any subsidiary of AmeriLife Group, LLC has received or should have received compensation for sales made by such subagents, whether such subagent is contracted directly or indirectly with an insurance company under an insurance contract with AmeriLife or any subsidiary of AmeriLife Group, LLC.

“**AmeriLyzer**” means the online software programs and platform for which Authorized User is obtaining access (i) that permits the Authorized User to provide a financial needs and objectives analysis in conjunction with a risk assessment for third-party consumers, (ii) that includes features that assist the Authorized User in determining if impartial conduct standards are met, and (iii) that provides product filtering allowing the Authorized User to select insurance products that meet needs determined during risk assessment.

“**Authorized User**” has the meaning set forth in the preamble.

“**Documentation**” means AmeriLife’s user manuals, technical manuals, and any other AmeriLife materials in printed, electronic, or other form, that describe the operation or use of the AmeriLyzer.

“**Effective Date**” means the Effective Date set forth on the initial page of this Agreement; provided, this Agreement is approved by AmeriLife.

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

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

**“Term”** has the meaning set forth in [Section 10](#).

**“Termination Date”** means December 31, 2017.

**“Third Party”** means any Person other than Authorized User or AmeriLife.

## **Section 2. Grant and Scope; Hierarchy; E&O coverage.**

**(a)** Subject to and conditioned upon Authorized User’s payment of the Access Fees and Authorized User’s strict compliance with all terms and conditions set forth in this Agreement, AmeriLife hereby grants to Authorized User a non-exclusive, non-transferable, non-assignable, non-sublicensable, limited access arrangement during the Term to use, individually and solely for their own use, the AmeriLyzer and any related Documentation, solely as set forth in this [Section 2](#) and subject to all conditions and limitations set forth in [Section 4](#) or elsewhere in this Agreement. This access arrangement grants Authorized User the right to access and run the AmeriLyzer in accordance with this Agreement solely for Authorized User’s internal business purposes. Notwithstanding any term herein to the contrary, the Authorized User shall not make use of AmeriLife’s or its affiliates’ names, logos, data, copyrighted or trademarked materials (including the AmeriLyzer trademark/service mark) in any manner (including, without limitation, in printed or online marketing materials) other than as expressly authorized by this Agreement. The Authorized User shall submit any material containing AmeriLife’s, its affiliates’ or the AmeriLyzer name, logo or data, and all copyrighted or trademarked materials of AmeriLife or its affiliates to AmeriLife via [DOLSolutionsTeam@AmeriLife.com](mailto:DOLSolutionsTeam@AmeriLife.com) for AmeriLife’s review and approval, which AmeriLife may give or withhold in its sole discretion, prior to any use thereof. Any approval by AmeriLife does not take the place of, and shall only be in addition to, the review by Authorized User of such marketing materials. Such marketing materials developed by Authorized User shall not be used prior to AmeriLife’s providing its approval to such use, and any such use of AmeriLife’s, its affiliates’ or the AmeriLyzer name, logo or data, or any copyrighted or trademarked materials of AmeriLife or its affiliates without AmeriLife’s approval shall be grounds for terminating this Agreement. Nothing in this Agreement shall be construed to grant Authorized User any right, title, interest, or license in or to AmeriLife’s names, brands, logos, service marks, or trademarks.

**(b)** Access to the AmeriLyzer is limited to producers who are current subagents in the AmeriLife Hierarchy. Authorized User represents and warrants to AmeriLife that they are in the AmeriLife Hierarchy pursuant to the insurance contracts identified on the initial page of this Agreement. The Authorized User covenants and agrees that they will take all steps necessary to remain in the AmeriLife Hierarchy for the duration of the Term, that it will immediately cease accessing the AmeriLyzer if it is at any point not in the AmeriLife Hierarchy, and that it will immediately notify AmeriLife in writing if Authorized User is no longer in the AmeriLife Hierarchy.

**(c)** Access to the AmeriLyzer is limited to producers who have obtained and maintain or cause to be obtained and maintained Errors and Omissions Insurance in sufficient coverage amounts to cover their acts as a fiduciary, as defined and determined under the U.S. Department of Labor’s rules and regulations. The Authorized User covenants and agrees that it will take all steps necessary to maintain Errors and Omissions Insurance in sufficient coverage amounts to cover their acts as a fiduciary, as defined and determined under the U.S. Department of Labor’s rules and regulations, in minimum coverage amounts of \$1 million in the aggregate and \$1 million per occurrence.

**Section 3. Third-Party Materials.** The AmeriLyzer includes software, content, data, or other materials, including related documentation, that are owned by Persons other than AmeriLife and that are provided to Authorized User on licensee terms that are in addition to and/or different from those contained in this Agreement (**“Third-Party Licenses”**). Authorized User is bound by and shall comply with all Third-Party Licenses (including, without limitation, Terms of Service of Riskalyze, Inc. found at [www.riskalyze.com/tos](http://www.riskalyze.com/tos) and the Security and Privacy

Policy of Riskalyze, Inc. found at [www.riskalyze.com/privacy](http://www.riskalyze.com/privacy), as they may be amended from time to time). Any breach by Authorized User of any Third-Party License is also a breach of this Agreement.

**Section 4. Use Restrictions.** Authorized User shall not directly or indirectly:

- (a) use (including make any copies of) the AmeriLyzzer or the related Documentation beyond the scope of the access arrangement granted under [Section 2](#);
- (b) provide any other Person including any subcontractor, independent contractor, affiliate, or service provider of Authorized User, with access to or use of the AmeriLyzzer or the related Documentation;
- (c) modify, translate, adapt, enhance, change, or otherwise create derivative works or improvements, whether or not patentable, of the AmeriLyzzer or the related Documentation or any part thereof;
- (d) combine the AmeriLyzzer or any part thereof with, or incorporate the AmeriLyzzer or any part thereof in, any other programs;
- (e) reverse engineer, reverse translate, reverse assemble, disassemble, decompile, decode, decrypt, decipher, reconstruct, or otherwise attempt to derive or gain access to the source code of the AmeriLyzzer or any part thereof;
- (f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the AmeriLyzzer or any related Documentation, including any copy thereof;
- (g) copy the AmeriLyzzer or any related Documentation, in whole or in part;
- (h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the AmeriLyzzer, or any features or functionality of the AmeriLyzzer, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;
- (i) use the AmeriLyzzer or Documentation in violation of any law, regulation, or rule; or
- (j) use the AmeriLyzzer or Documentation for purposes of competitive analysis of the AmeriLyzzer, the development of a competing software product or service, or any other purpose that is to AmeriLife's commercial disadvantage.

**Section 5. Responsibility for Use of AmeriLyzzer.** Authorized User is responsible and liable for all uses of the AmeriLyzzer and Documentation through access thereto provided by Authorized User, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Authorized User is responsible and liable for all actions and failures to take required actions with respect to the AmeriLyzzer and Documentation by such Authorized User or by any other Person to whom Authorized User may provide access to or use of the AmeriLyzzer and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

**Section 6. Compliance Measures.**

- (a) The AmeriLyzzer may contain technological copy protection or other security features designed to prevent unauthorized use of the AmeriLyzzer, including features to protect against any use of the AmeriLyzzer that is prohibited under [Section 4](#). Authorized User shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.
- (b) Upon AmeriLife's written request, Authorized User shall conduct a review of their use of the AmeriLyzzer and certify to AmeriLife in a written instrument signed by the Authorized User, or an officer of Authorized User, if the Authorized User is a corporation or other legal entity, that it is in full compliance with this Agreement or, if Authorized User discovers any noncompliance:

- (i) Authorized User shall immediately remedy such noncompliance and provide AmeriLife with written notice thereof. Authorized User shall provide AmeriLife with all access and assistance as AmeriLife requests to further evaluate and remedy such noncompliance.
- (ii) If Authorized User's use of the AmeriLyzer exceeds the single individual authorized by this Agreement to access the AmeriLyzer, AmeriLife shall have the remedies set forth in [Section 6\(d\)](#).
- (c) During the Term, AmeriLife may, in AmeriLife's sole discretion, audit Authorized User's use of the AmeriLyzer to ensure Authorized User's compliance with this Agreement. AmeriLife also may, in its sole discretion, audit Authorized User's systems within twelve (12) months after the end of the Term to ensure Authorized User has ceased use of the AmeriLyzer and removed all copies of the AmeriLyzer from such systems as required hereunder, if any. The Authorized User shall fully cooperate with AmeriLife's personnel conducting such audits and provide all access requested by AmeriLife to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information.
- (d) If AmeriLife determines that the Authorized User's use of the AmeriLyzer exceeds or exceeded the use permitted by this Agreement then:

  - (i) Authorized User shall, within fifteen (15) days following the date of such determination by Authorized User or AmeriLife's written notification thereof, pay to AmeriLife the retroactive Access Fees for such excess use and, unless AmeriLife terminates this Agreement pursuant to [Section 6.1\(d\)\(iii\)](#), obtain and pay for a valid access arrangement to bring Authorized User's use into compliance with this Agreement. In determining the Access Fee payable pursuant to the foregoing, (x) unless Authorized User can demonstrate otherwise by documentary evidence satisfactory to AmeriLife, all excess use of the AmeriLyzer shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by AmeriLife hereunder, and continued uninterrupted thereafter, and (y) the rates for such access arrangements shall be determined without regard to any discount to which Authorized User may have been entitled had such use and access been properly provided prior to its commencement (or deemed commencement).
  - (ii) If the use and access exceeds or exceeded the use permitted by this Agreement, Authorized User shall also pay to AmeriLife, within ten days following the date of AmeriLife's written request therefor, AmeriLife's reasonable time and materials costs at AmeriLife's then-current rates incurred in conducting the audit.
  - (iii) If the use exceeds or exceeded the use permitted by this Agreement, AmeriLife shall also have the right to terminate this Agreement and the access arrangement granted hereunder, effective immediately upon written notice to Authorized User.

AmeriLife's remedies set forth in this [Section 6\(d\)](#) are cumulative and are in addition to, and not in lieu of, all other remedies AmeriLife may have at law or in equity, whether under this Agreement or otherwise.

## **Section 7. Collection and Use of Information.**

- (a) Authorized User acknowledges that AmeriLife may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the AmeriLyzer and about equipment via which the AmeriLyzer is accessed and used, through:

  - (i) the provision of maintenance and support services, if any; and
  - (ii) security measures included in the AmeriLyzer as described in [Section 6](#).
- (b) Authorized User agrees that AmeriLife may use such information for any purpose related to any use of the AmeriLyzer by Authorized User or on Authorized User's equipment, including but not limited to:

  - (i) improving the performance of the AmeriLyzer; and
  - (ii) verifying Authorized User's compliance with the terms of this Agreement and enforcing AmeriLife's rights, including all Intellectual Property Rights in and to the AmeriLyzer.

**Section 8. Intellectual Property Rights.** Authorized User acknowledges and agrees that the AmeriLyzer and any related Documentation are provided under an access arrangement or license, and not sold, to Authorized User. Authorized User does not acquire any ownership interest or proprietary interest in the AmeriLyzer or Documentation under this Agreement, or any other rights thereto, other than the right to access and use the same in accordance with the access arrangement granted and subject to all terms, conditions, and restrictions under this Agreement. Authorized User acknowledges and agrees that AmeriLife and its licensors and service providers reserve and shall retain their entire right, title, and interest in and to the AmeriLyzer, Documentation and all Intellectual Property Rights arising out of or relating to the AmeriLyzer, including derivatives, improvements, and modifications. Authorized User agrees that no right, title, or interest in the AmeriLyzer, Documentation, and Intellectual Property Rights is granted to Authorized User under this Agreement. To the extent that Authorized User were considered to have obtained any right in any Intellectual Property Rights of AmeriLife or to the AmeriLyzer or Documentation, Authorized User hereby assigns all such rights to AmeriLife, and Authorized User agrees to promptly execute any such assignment or other instrument deemed reasonably necessary by AmeriLife to protect or maintain AmeriLife's rights. Authorized User agrees that any recommendations or observations by Authorized User to AmeriLife regarding the AmeriLyzer shall be the sole property of AmeriLife, that AmeriLife and/or its service providers/licensors may use or incorporate such recommendations or observations, and that AmeriLife does not owe Authorized User any compensation of any kind related thereto. Authorized User shall safeguard all AmeriLyzer (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Authorized User shall promptly notify AmeriLife if Authorized User becomes aware of any infringement of AmeriLife's Intellectual Property Rights in the AmeriLyzer and fully cooperate with AmeriLife in any legal action taken by AmeriLife to enforce its Intellectual Property Rights.

**Section 9. Payment of Access Fees.** All Access Fees are payable in advance in the manner set forth in this Agreement and are non-refundable. Any renewal of the access arrangement hereunder shall not be effective until the fees for such renewal have been paid in full.

**Section 10. Term and Termination.**

**(a)** This Agreement and the access arrangement granted herein shall commence upon the Effective Date and continue in effect until the Termination Date or until otherwise terminated as set forth herein (the "Term").

**(b)** Authorized User may terminate this Agreement by ceasing to access and use AmeriLyzer and destroying all copies of Documentation.

**(c)** AmeriLife may terminate this Agreement, effective upon written notice to Authorized User, if Authorized User, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured five (5) days after AmeriLife provides written notice thereof.

**(d)** AmeriLife may terminate this Agreement, effective immediately, if Authorized User files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

**(e)** AmeriLife may terminate this Agreement, effective immediately, if it determines that Authorized User is not in the AmeriLife Hierarchy.

**(f)** AmeriLife may terminate this Agreement for convenience at any time during the Term upon written notice to the Authorized User, provided that AmeriLife provides thirty (30) days' written notice to Authorized User unless otherwise precluded by contract, applicable law, court order, licensor, or circumstance beyond the control of AmeriLife.

**(g)** Upon expiration or earlier termination of this Agreement, the access arrangement granted hereunder shall also terminate, and Authorized User shall cease accessing and using AmeriLyzer and destroy all copies of Documentation. No expiration or termination shall affect Authorized User's obligation to pay all Access Fees that may have become due before such expiration or termination, or entitle Authorized User to any refund.

**Section 11. Warranty Disclaimer.** THE AMERILYZER AND DOCUMENTATION ARE PROVIDED TO AUTHORIZED USER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, AMERILIFE, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE AMERILYZER AND DOCUMENTATION, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE AMERILIFE PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT AMERILYZER WILL MEET THE AUTHORIZED USER'S REQUIREMENTS, MEET THE REQUIREMENTS OF THE FIDUCIARY RULE OR OTHER APPLICABLE LAW RELATED TO THE SALE OF INSURANCE PRODUCTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, TIMELY, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

**Section 12. Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL AMERILIFE OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO AUTHORIZED USER OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE AMERILYZER; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; PERSONAL INJURY; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; AUTHORIZED USER'S FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT AMERILIFE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT WILL AMERILIFE'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LIENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, MISREPRESENTATION, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO AMERILIFE PURSUANT TO THIS AGREEMENT FOR THE AMERILYZER IN THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF AUTHORIZED USER'S WRITTEN NOTICE OF A CLAIM TO AMERILIFE.

(c) THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS SET FORTH HEREIN REPRESENT THE PARTIES' AGREEMENT AS TO THE ALLOCATION OF RISK BETWEEN THE PARTIES UNDER THIS AGREEMENT. THE LIMITATIONS SET FORTH IN [SECTION 12\(a\)](#) AND [SECTION 12\(b\)](#) SHALL APPLY EVEN IF THE AUTHORIZED USER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

**Section 13. Indemnification.** Authorized User shall indemnify, defend and save harmless AmeriLife, its affiliates and their respective officers, directors, members, employees, licensors, contractors and service providers from and against all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, charges and expenses, including without limitation, fees and expenses of legal counsel and expert witnesses, which are the result of or arise out of Authorized User's use or access to the AmeriLyzzer, or which may be imposed or incurred by or asserted against AmeriLife by reason of actual or alleged: (a) damages or losses suffered by any Person (including customers and clients serviced by Authorized User); (b) violation of any law, ordinance or regulation of any federal, state, or local governmental authority by Authorized User or its officers, contractors, subcontractors, vendors, agents or employees; or (c) Authorized User's breach of this Agreement. This provision shall survive the termination of this Agreement.



**Section 14. Confidential Information.** All non-public, confidential or proprietary information of AmeriLife or its affiliates, including, but not limited to, all information related to the AmeriLyzer, any marketing materials relating to the AmeriLyzer, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, disclosed by AmeriLife to Authorized User, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by AmeriLife in writing. Upon AmeriLife’s request, Authorized User shall promptly return all documents and other materials received from AmeriLife. AmeriLife shall be entitled to injunctive relief for any violation of this Section. This provision shall survive the termination of this Agreement. This Section shall not apply to information that is in the public domain; known to Authorized User at the time of disclosure; or rightfully obtained by Authorized User on a non-confidential basis from a Third Party.

**Section 15. Miscellaneous.**

**(a)** All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule. The jurisdiction and venue for all disputes arising out of, related to, under or in connection with this Agreement and the transactions contemplated hereunder shall be addressed and resolved solely and exclusively in the Circuit Court for the Sixth Judicial Circuit located in Pinellas County, Florida. The Parties hereto acknowledge and agree that the sole and exclusive forum and venue for all dispute resolution shall be the state and federal courts sitting in and for Pinellas County, Florida, and that such court shall have jurisdiction over all proceedings in connection with this Agreement. The parties further irrevocably waive, to the extent not prohibited by applicable Law, and agree not to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such action brought in one of the above-named courts should be dismissed on grounds of *forum non conveniens*, should be transferred to any court other than one of the above-named courts, or should be stayed by reason of the pendency of some other proceeding in any other court other than one of the above-named courts, or that this Agreement or the subject matter hereof may not be enforced in or by such court. In the event that either party engages the services of legal counsel to enforce the terms and conditions of this Agreement against the other party and/or if any litigation arises based or founded upon or arising out of this Agreement, or where the effect of the construction of this Agreement is sought to be enforced, then the prevailing party in such litigation shall be entitled to recover its reasonable costs and attorneys’ fees from the non-prevailing party incurred at both the trial and appellate level.

**(b)** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**(c)** AmeriLife will not be responsible or liable to Authorized User, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Authorized User equipment, loss and destruction of property, or any other circumstances or causes beyond AmeriLife’s reasonable control.

**(d)** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the Authorized User at the address set forth on the initial page hereto and to AmeriLife at 2650 McCormick Drive, Suite 300R, Clearwater, FL, 33759 (or to such other address as may be designated by a party from time to time in accordance with this [Section 15\(d\)](#)).

**(e)** This Agreement, together with all annexes, schedules, and exhibits attached hereto and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Authorized User and AmeriLife with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

**(f)** Authorized User shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without AmeriLife's prior written consent, which consent AmeriLife may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Authorized User (regardless of whether Authorized User is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which AmeriLife's prior written consent is required. No delegation or other transfer will relieve Authorized User of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this [Section 15\(f\)](#) is void. AmeriLife may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Authorized User's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

**(g)** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. The execution of this Agreement does not form the basis of any employment arrangement for either party.

**(h)** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. The Parties agree that the provisions of this Agreement which are intended to survive termination of this Agreement shall survive such termination or expiration and be enforceable.

**(i)** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**(j)** For purposes of this Agreement, (a) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Annexes, Schedules, and Exhibits refer to the Sections of, and Annexes, Schedules, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. All Annexes, Schedules, and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**(k)** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**(l)** This Agreement may be executed in counterparts, each of which will be deemed an original agreement, but all of which together will constitute one and the same instrument. Execution and delivery of this Agreement by facsimile or other electronic transmission (including, without limitation, portable document format) will constitute execution and delivery of this Agreement for all purposes, with the same force and effect as execution and delivery of an original manually signed copy hereof.

**ANNEX 1**  
**ACCESS FEES**

Access Fees are waived for the Authorized User until December 31, 2017; *provided*, that the Authorized User complies with the terms and conditions of this Agreement. AmeriLife reserves the right to charge the Authorized User Access Fees following December 31, 2017.