

## MASTER SERVICES AGREEMENT

AGREEMENT NO.: \_\_\_\_\_  
DATE: \_\_\_\_\_

Between County of San Mateo (hereinafter "Client"), a political subdivision of the State of California with principal offices at Redwood City, California and INFORMATION BUILDERS, INC. (hereinafter "Information Builders"), a New York Corporation with principal offices at Two Penn Plaza, New York, New York 10121-2898, U.S.A

1. **Preamble**

This Master Services Agreement ("Agreement") sets forth the terms and conditions under which Information Builders shall provide services to Client.

2. **Effective Date**

The effective date of this Agreement shall commence on the earlier of: (i) the date listed above; or (ii) the date upon which the Agreement was executed by both parties (the "Effective Date").

3. **Services**

3.1 Information Builders shall provide the services described herein and specified more fully in the Statement of Work ("SOW") attached hereto and made a part hereof (the "Services"). From time to time the parties may agree to additional SOW(s) that shall also, upon execution, be incorporated herein by reference.

3.2 All Services shall be performed on a time and materials basis unless otherwise specified in the SOW. Any change in the scope of Services as set forth in the SOW shall be agreed upon in writing by the parties, and Information Builders shall have no obligation to perform services in connection with any such change until such time as the parties have agreed upon the effect of such change on Information Builders' fees and/or schedule of performance.

3.3 SOWs executed by the parties may provide certain assumptions and/or responsibilities of Client regarding the Services. Client understands that Information Builder's performance is contingent upon the validity of all assumptions, Client's timely and effective performance of its responsibilities, and Client's timely decisions and approvals.

4. **Invoicing and Payment**

4.1 Payments will be made on the basis and rates set forth in the applicable SOW. All invoices are due thirty (30) days upon receipt.

4.2 Client shall pay all taxes, if any, however designated and in addition to any charges payable to Information Builders hereunder, incurred in connection with, or as a result of, this Agreement or the Services, including, without limitation, state and local, privilege, excise, sales, and use taxes paid or payable by Information Builders, except any tax based on Information Builders' net income.

4.3 Information Builders shall be reimbursed, for all pre-approved out-of-pocket expenses of its consultants, incurred in the performance of the Services where such pre-approval may be set forth in the SOW or otherwise in writing. The maximum reimbursement amount for the actual cost of lodging, meals, and incidental expenses ("M&I Expenses") is limited to the then current Continental United States ("CONUS") rate for the location of the work being done (i.e., Belmont for work done at the Human Services Agency administration building) as set forth in the Code of Federal Regulations and as listed by the website of the U.S. General Services Administration (available online at <http://www.gsa.gov/porta/content/104877>, or by searching [www.gsa.gov](http://www.gsa.gov) for the term "CONUS." Client will set the maximum for lodging at twice the CONUS rate and CONUS rates for all other reimbursement. Information Builders shall provide documentation of all expenses.

4.4 In the event of any dispute regarding a portion of an invoice, the undisputed portion shall be paid as provided herein. Information Builders will retain applicable records for Client's inspection for a period of two (2) years.

5. **Confidential Information**

The parties may, from time to time, in connection with work contemplated under this Agreement, disclose confidential information to each other by designating in writing such information as confidential ("Confidential Information"). Each party will use reasonable efforts to prevent the disclosure of any of the other party's Confidential Information to third parties, but in no event shall those efforts be less than those employed by that party to protect its own confidential information of like kind. The recipient party's obligation shall be for a period of two (2) years from receipt of the Confidential Information. The above notwithstanding, the recipient party's obligation shall not apply to information that:

- (a) is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure;
- (b) is already in the recipient party's possession at the time of disclosure thereof;
- (c) is or later becomes part of the public domain through no fault of the recipient party;
- (d) is received from a third party having no obligations of confidentiality to the disclosing party;
- (e) is independently developed by the recipient party; or
- (f) is required by law or regulation to be disclosed.

In the event that information is required to be disclosed pursuant to subsection (f), the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

6. **Personnel**

6.1 Information Builders shall be solely responsible for the payment of their personnel's benefits and entire compensation, including employment taxes, worker's compensation, and any similar taxes associated with employment.

6.2 Client shall provide Information Builder's personnel with adequate work areas, access to computer terminals, data, programs, and personnel, who will provide prompt review of questions submitted, and all other facilities, as may be reasonably required for performance of services by Information Builders.

6.3 Information Builders agrees to comply with all reasonable rules, regulations, and policies of Clients while performing services at Client's facilities.

7. **Non-Solicitation**

Client shall not directly or indirectly solicit for employment or hire or utilize the services of any employee, agent, representative or consultant of Information Builders who is or was engaged in any work performed under this Agreement during the time any work is being performed and for one year after the completion of Services, or assist any third party so doing.

8. **Rights in Materials**

8.1 Any and all deliverables including software programs, source and object code, files, tapes, disks and related user documentation, originally developed or created for Client under any SOW issued pursuant to this Agreement ("the Work Product") shall remain the property of Information Builders. Upon the payment of all approved fees incurred, Client shall have an irrevocable, perpetual, non-exclusive, worldwide, fully paid-up license to use, execute, reproduce, display, perform, modify, distribute (internally or to affiliates or wholly-owned subsidiaries) copies of the Work Product.

8.2 The above notwithstanding, Information Builders is the owner of certain proprietary software and applications including, but not



limited to, the WebFocus and iWay family of products. Information Builders' rights in and to such proprietary software and applications (and all related intellectual property rights, training materials, written materials and source codes) are protected by certain patents, trademarks, copyrights and trade secret protections. Nothing contained herein shall be deemed to grant Client (or any other party) any right, title or interest in or to such proprietary software and applications or to any improvement or modification made to such during the course of any Services performed hereunder, or to any development methodology, programming methods, techniques or know-how utilized by Information Builders or others, or to prevent Information Builders from rendering the same or similar services to others.

#### 9. **Indemnification for Infringement**

9.1 Information Builders warrants that Client will have the full right to use the Work Product delivered to Client and that it will not infringe upon the rights of any third party.

9.2 In the event a claim is made against Client for infringement, Information Builders will defend the claim on Client's behalf and indemnify and hold Client harmless from all financial liability (including reasonable legal fees) provided:

- (a) Information Builders is promptly notified of the claim in writing;
- (b) Information Builders is given full control of the defense and settlement of the matter provided Information Builders reasonably consults with Client on any settlement, and provided Information Builders shall not have the right to settle any criminal action, suit, or proceeding without Client's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this section shall not impose any financial or other obligation on Client, or contain any stipulation, admission, or acknowledgement of wrong doing on the part of Client without Client's prior consent, not to be unreasonably withheld. Notwithstanding the foregoing, Client may, at its own expense, assist in such defense if it so chooses, provided that Information Builders will control such defense;
- (c) Client cooperates fully with Information Builders in the defense and settlement of the matter; and
- (d) the claims shall have not arisen due to Client's modification of the Work Product or Client's negligence or improper acts.

9.3 In addition, if due to Information Builder's fault, Client cannot use the Work Product as a result of the infringement, Information Builders, at its option and expense, will either:

- (a) obtain a license for Client to use the infringing item;
- (b) provide a non-infringing work-around; or
- (c) refund to Client that portion of the fee relating to the infringing item.

Once Information Builders has done any one of the above, it shall have no further liability to Client for the infringement, except for its obligation to indemnify Client in Section 9.2 of this Agreement. The duty of Information Builders to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code

#### 10. **Warranties**

10.1 Information Builders warrants that the Services shall be performed by qualified personnel and will be of a professional quality conforming to generally accepted industry standards.

10.2 In the case of time and materials based SOWs, Information Builders does not promise that the work can be completed for the amount estimated or within any specified time period.

10.3 It is Client's responsibility to determine its data processing needs and to satisfy itself that the Services ordered will meet those needs. Information Builders is not responsible for the manner in which the results of the Services are used by Client.

10.4 If any Services do not meet the warranty set forth above, Information Builders will use all commercially reasonable efforts, without charge, to bring its services to the specified level. In order to obtain such warranty service, the problem must be reported to Information Builders within 90 days of delivery of the

item in question. However, any other services will be on a time and materials basis.

10.5 Client's sole and exclusive remedy is for Information Builders to use commercially reasonable efforts to cause the Services to comply with the foregoing warranties. In the event, Information Builders cannot provide such Services within a reasonable time after notification, Client's sole and exclusive remedy is to terminate this Agreement and to receive a refund of any fees paid to Information Builders for the non-conforming Services.

10.6 EXCEPT FOR ITS WARRANTY SET FORTH ABOVE INFORMATION BUILDERS MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED. INFORMATION BUILDERS DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10.7 EXCEPT FOR A BREACH OF SECTION 5 CONFIDENTIALITY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR EXPENSES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, REVENUE, DATA, OR USE, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING BUT NOT LIMITED TO ERRORS OR OMISSIONS OR BREACH OF WARRANTY), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR BREACHES OF INFORMATION BUILDERS' OBLIGATIONS PURSUANT TO SECTION 5 CONFIDENTIALITY AND WITH RESPECT TO INFRINGEMENT CLAIMS (SECTION 9), INFORMATION BUILDERS' MAXIMUM LIABILITY FOR ANY DAMAGES, REGARDLESS OF FORM OF ACTION, SHALL BE LIMITED TO DIRECT AND ACTUAL DAMAGES AND IN NO EVENT EXCEED IN THE AGGREGATE THE AMOUNT OF FEES PAID TO IT FOR THE RELEVANT SERVICES GIVING RISE TO SUCH CLAIM.

#### 11. **Indemnity**

Each party shall defend, indemnify and hold harmless the other party from liability for personal injury or property damage to the extent caused by the indemnifying party's negligence or willful misconduct while performing their respective obligations pursuant to this Agreement on Client's premises provided:

- (a) the indemnifying party is promptly notified of the claim in writing;
- (b) the indemnifying party is given full control of the defense and settlement of the matter provided the indemnifying party reasonably consults with the indemnified party on any settlement, and provided the indemnifying party shall not have the right to settle any criminal action, suit, or proceeding without the indemnified party's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this section shall not impose any financial or other obligation on the indemnified party, or contain any stipulation, admission, or acknowledgement of wrong doing on the part of the indemnified party without the indemnified party's prior consent, not to be unreasonably withheld. Notwithstanding the foregoing, the indemnified party may, at its own expense, assist in such defense if it so chooses, provided that the indemnifying party will control such defense; and
- (c) the indemnified party cooperates fully in the matter.

The duty of Information Builders to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code



12. **Termination**
- 12.1 **This termination date of this Agreement shall be June 30, 2017 unless terminated earlier as described below, or extended as described in Section 13.9**
- 12.2 Either party may terminate this Agreement or any outstanding SOW without cause by giving the other party ten (10) business days' written notice; such termination to be effective ten (10) business days after the non terminating party's actual receipt of such notice. Information Builders shall be paid for all Services and reimbursable expenses to the effective date of termination, Information Builders shall not be liable for delays, added costs, failure to complete the project, or incomplete work resulting from such termination.
- 12.3 Either party may terminate this Agreement for a material breach upon giving the other party thirty (30) days prior written notice specifically identifying the alleged breach, provided that the breaching party does not cure or make reasonable progress to cure the alleged breach during the thirty (30) day notice period.
- 12.4 Unless the parties subsequently agree otherwise in writing, the terms and conditions of this Agreement shall govern any services which Information Builders may provide to Client in the future, regardless of how services are ordered, including, but not limited to, a SOW or other work order which references this Agreement.
13. **General**
- 13.1 **Independent Contractor**  
The parties are acting as independent contractors under this Agreement and neither party shall have the authority to bind, represent or commit the other party. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership, or agency relationship between the parties for any purpose.
- 13.2 **Law to be Applied**  
This Agreement and all SOWs issued hereunder shall be governed by and interpreted under the laws of the State of California without application of its conflict of laws principles.
- 13.3 **Forum**  
The parties agree that the making and performance of this Agreement constitutes the transaction of business in California sufficient to give the federal and state court therein jurisdiction over both parties. Any action or proceeding involving, arising out of, or relating to this Agreement, or the making or breach thereof, shall be brought in a federal or state court located in the County of San Mateo Superior Court, State of California, or in the United States District Court for the Northern District of California, and in no other forum, and the jurisdiction of such courts over such matters shall be exclusive.
- 13.4 **Waiver**  
The failure of any party to enforce or exercise, at any time or for any period of time, any term of or any right arising pursuant to this Agreement or any SOW issued hereunder does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right to later enforce or exercise it. The waiver by either party of the breach of any provision of this Agreement shall not constitute a waiver of the breach of any other provision, or of the subsequent breach of the same provision.
- 13.5 **Severability**  
The invalidity or unenforceability of any term of or any right arising pursuant to this Agreement or any SOW issued hereunder shall in no way affect the remaining terms or rights.
- 13.6 **Force Majeure**  
Neither Party shall be liable for delay or failure in the performance of its contractual obligations arising from any one or more events which are beyond its reasonable control. Upon such delay or failure affecting one party, that party shall notify the other party and use all commercially reasonable endeavors to cure or alleviate the cause of such delay or failure with a view to resuming performance of its contractual obligations as soon as practicable.
- 13.7 **Assignment**  
Neither party shall assign this Agreement or any rights or obligations hereunder without the express written consent of the other party, such consent not to be unreasonably withheld.

- 13.8 **Binding Effect**  
This Agreement shall be binding upon and inure to the benefit of the parties, and their heirs, successors, and assigns.
- 13.9 **Amendment**  
This Agreement may not be amended, waived, terminated, or superseded except by a written instrument signed by duly authorized representative of both parties.
- 13.10 **Survival**  
The terms of Sections 4, 5, 7, 8,9,10, 11 and 13 shall survive the termination of this Agreement for any reason.
- 13.11 **Conflicting Provisions**  
In the event of any conflict between the provisions of this Agreement and any other document, including, but not limited to, any attachments, this Agreement shall govern and control unless explicitly agreed to otherwise by the parties in writing.
- 13.12 **Plural and Singular Usage**  
As used herein, the singular of any term includes the plural and the plural means the singular, whenever the context so requires.
- 13.13 **Headings**  
The section headings in this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.
- 13.14 **Authority**  
The parties hereby warrant and represent that their respective signatures set forth below have been, and are on the Effective Date, duly authorized by all necessary and appropriate statutory and/or corporate action to execute this Agreement.
- 13.15 **Notices**  
Notices under this Agreement or any SOW shall be deemed given when sent by overnight courier or registered mail to the parties at the addresses specified below or such new address as they shall communicate to each other in writing from time to time.
- To Client:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- Attn: \_\_\_\_\_
- To Information Builders:
- Information Builders, Inc.  
Two Penn Plaza  
New York, New York 10121-2898, U.S.A.  
Attn: Vice President, Professional Services Division
- 13.16 **Entire Agreement**  
This Agreement contains the entire agreement by and between the parties and all discussions, negotiations, statements, advice as to functionality, representations and prior agreements are merged herein and shall not survive. Client is entering into this Agreement solely based upon the agreements and representations contained herein for its own purposes and not for the benefit of any third party. The Agreement consists of:
- \* Master Services Agreement
  - \* Exhibit A 504 Compliance
  - \* Exhibit B HIPAA Health Insurance Portability and Accountability Act
  - \* Exhibit C Statement of Compliance with County of San Mateo Ordinance and Policy
  - \* Rider #1 Statement of Work
- 13.17 **Maximum Value of Agreement**  
In no event shall Client's total fiscal obligation under this Agreement exceed nine hundred and forty thousand dollars (\$940,000).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year above written.

**Information Builders, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**County of San Mateo**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date