

Master Agreement

This Master Agreement (this "**Agreement**") is entered into as of the last date of signature of the parties (the "**Effective Date**") by and between International Data Base Corporation DBA Bidnet, with a place of business at 15 British American Blvd, Latham, NY 12110 ("**Company**"), and Contra Costa County with a place of business at 40 Muir Road, 2nd Floor, Martinez, CA, 94553 ("**Customer**"). Company and Customer are sometimes referred to jointly as the "parties" or singularly as a "party."

This Agreement governs Customer's access to and use of Company's Subscription Services and the retention of Company's Professional Services.

1. DEFINITIONS

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Customer Data**" means all data and other information submitted by Customer to the Purchased Services.

"**Customer Supplied Material**" means information, design, specification, instruction, software, applications, Customer Data, or other material furnished by Customer to Company or any of its Affiliates.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.

"**Non-Company Applications**" means online applications and offline software products provided by entities or individuals other than Company and are identified as such, and that interoperate with the Services.

"**Order Form**" means the documents for placing orders hereunder, including addenda and supplements thereto, that are entered into between Customer or any of its Affiliates from time to time. By entering into an Order Form hereunder, the Affiliate of Customer agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms signed by both parties shall be deemed incorporated herein by reference.

"**Professional Services**" shall mean work performed by Company for Customer pursuant to an Order Form under this Agreement.

"**Purchased Services**" means Services that Customer or Customer's Affiliates purchase under an Order Form.

"**Services**" means the Subscription Services and Professional Services set forth in one or more Order Form. "Services" exclude Non-Company Applications.

"**Subscription Services**" means hosted "software as a service" for certain Company software applications, programming, and user interfaces thereof, together with any applicable documentation and user guide(s) thereto, provided to authorized Users, as further set forth on each Order Form.



"Users" means individuals who are authorized by Customer to use the Services, for whom subscriptions to Services have been ordered, and who have been supplied user identifications and passwords by Customer (or by Company at Customer's request). Users may include but are not limited to Customer's employees, consultants, contractors, agents, and third parties with which Customer transacts business.

2. PURCHASED SERVICES

- 2.1 **Provision of Purchased Services.** Company shall make the Purchased Services available to Customer pursuant to this Agreement and the relevant Order Forms during the Subscription term. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Company regarding future functionality or features.
- 2.2 **User Subscriptions.** Services that are purchased as User subscriptions, as set out in an Order Form may be accessed by no more than the specified number of Users. Additional User Subscriptions may be added during the applicable Subscription term at the same pricing as that for the pre-existing Subscriptions thereunder, prorated for the remainder of the Subscription term in effect at the time the additional User Subscriptions are added. The added User Subscriptions shall terminate on the same date as the pre-existing Subscriptions. User Subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

3. PROFESSIONAL SERVICES

- 3.1 **Professional services described in the Order form.** From time to time, Company and Customer may enter into Order Forms for the development and provision of Professional Services, which shall be subject to the payment of additional fees as set forth in the Order Form. Each Order Form shall be consecutively numbered by Company and will reference this Agreement. Once an Order Form has been signed by the parties, it will form an integral part of this Agreement.
- 3.2 **Contract Property.** Company hereby grants Customer a worldwide, non-exclusive, non-transferable, royalty-free license to use, for the term of this Agreement and for Customer's internal business purposes only, anything developed by Company under an Order Form for Customer under this Agreement. The Contract Property is not "work for hire" and Company shall retain all ownership rights to the Contract Property.

4. USE OF THE SERVICES

- 4.1 **Company Responsibilities.** Company shall: (i) provide support for the Purchased Services to Customer, and (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime, or (b) any unavailability caused by circumstances beyond Company's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labour problems (other than those involving Company's employees), Internet service provider failures or delays, or service attacks. Details of the service level agreement are found in Exhibit A.
- 4.2 **Protection of Customer Data.** Company shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data. Company shall not (a) modify Customer Data except to the extent required to provide the Services, (b) disclose Customer Data except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or as expressly permitted in writing by Customer, or (c) access Customer Data except to provide the Services and prevent or address service or technical problems, or at Customer's request in connection with customer support matters.



- 4.3 **Customer Responsibilities.** Customer shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Customer Data and of the means by which Customer acquired its Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Company promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the terms and conditions of this Agreement, user guide(s) and applicable laws and government regulations. Customer shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.
- 4.4 **Usage Limitations.** If Company opts to impose Services limitations on all customers, such as but not limited to disk storage space, application programming interface calls, Company will use reasonable endeavours to provide at least 3 months written notice of such limitations to Customer. Company will also provide real-time information to enable Customer to monitor Customer's compliance with such limitations.
- 4.5 **Acquisition of Non-Company Products and Services.** Company or third parties may from time to time make available to Customer third-party products or services, including but not limited to Non-Company Applications and implementation, customization, and other consulting services. Any acquisition by Customer of such Non-Company products or services, and any exchange of data between Customer and any Non-Company provider, is solely between Customer and the applicable Non-Company provider. Company does not warrant or support Non-Company products or services, whether they are designated by Company as "certified" or otherwise, except as specified in an Order Form. Subject to Section 4.7 (Integration with Non-Company Services), no purchase of Non-Company products or services is required to use the Services except a supported computing device, operating system, web browser and Internet connection.
- 4.6 **Non-Company Applications and Customer Data.** If Customer installs or enable Non-Company Applications for use with Services, Customer acknowledge that Company may allow providers of those Non-Company Applications to access Customer Data as required for the interoperation of such Non-Company Applications with the Services. Company shall not be responsible for any disclosure, modification, or deletion of Customer Data resulting from any such access by Non-Company Application providers. The Services shall allow Customer to restrict such access by restricting Users from installing or enabling such Non-Company Applications for use with the Services.
- 4.7 **Integration with Non-Company Applications.** The Services may contain features designed to interoperate with Non-Company Applications. To use such features, Customer may be required to obtain access to such Non-Company Applications from their providers. If the provider of any such Non-Company Application ceases to make the Non-Company Application available for interoperation with the corresponding Service features on reasonable terms, Company may cease providing such Service features without entitling Customer to any refund, credit, or other compensation.

5. FEES AND PAYMENT

- 5.1 **Purchased Services.** Customer shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services purchased and not actual usage, (ii) payment obligations are non-cancellable and fees paid are non-refundable, and (iii) the number of User subscriptions purchased cannot be decreased during the relevant Subscription term stated on the applicable Order Form.
- 5.2 **Professional Services.** Customer shall pay all fees for Professional Services as specified in each Order Form according to the payment terms outlined. Unless otherwise expressly stated in the applicable Order Form, Professional Services are performed for a fixed amount.



- 5.3 **Invoicing and Payment.** Customer will provide Company with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Company. If Customer provides credit card information to Company, Customer authorizes Company to charge such credit card for all Services listed in the Order Form for the initial Subscription term and any renewal Subscription term(s) as set forth in Section 11.2 (Term of Purchased Subscription Services). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, Company will invoice Customer in advance and otherwise in accordance with the relevant Order Form.

Professional Services will be invoiced based on terms outlined in the Order Form. Customer is responsible for providing complete and accurate billing and contact information to Company and notifying Company of any changes to such information. Unless otherwise stated, invoiced charges are due net 30 day(s) from the invoice date.

- 5.4 **Overdue Charges.** If any charges are not received from Customer by the due date, then at Company's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) Company may condition future subscription renewals and Order Forms on prepayment or payment terms shorter than those specified in Section 5.3 (Invoicing and Payment).
- 5.5 **Suspension of Service and Acceleration.** If any amount owing by Customer under this Agreement is 30 or more days overdue (or 10 or more days overdue in the case of amounts Customer has authorized Company to charge to Customer's credit card), Company may, without limiting Company's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable, and suspend Company's services to Customer until such amounts are paid in full. Company will give Customer at least 7 days' prior notice that Customer's account is overdue, in accordance with Section 13.2 (Manner of Giving Notice), before suspending services to Customer.
- 5.6 **Payment Disputes.** Company shall not exercise its rights under Section 5.4 (Overdue Charges) or 5.5 (Suspension of Service and Acceleration) if Customer (i) is disputing the applicable charges reasonably and in good faith, (ii) is cooperating diligently to resolve the dispute and (iii) has paid the undisputed portion of such charges.
- 5.7 **Taxes.** Unless otherwise stated, fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including but not limited to value-added, goods and services, harmonized, sales, use or withholding taxes, assessable by any local, state, provincial, federal, or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If Company has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Company is solely responsible for taxes assessable against Company based on Company's income, property, and employees.

6. PROPRIETARY RIGHTS

- 6.1 **Company Ownership.** Company and its licensors own all rights, title, and interest in and to the Services, and other Company Confidential Information. Company reserves all rights, title, and interest in and to the Services, including all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 6.2 **Grant of Company Rights.** Company hereby grants Customer (for itself and its Users) a non-exclusive, non-transferable, right to use the Services, solely during the term of this Agreement, subject to its the terms and conditions and within the scope of use defined in the relevant Order Form.



- 6.3 **Restrictions.** Customer shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services except as authorized herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on its own intranets or otherwise for its own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.
- 6.4 **Customer Ownership.** Customer and its licensors own all rights, title, and interest in and to the Customer Supplied Material and other Customer Confidential Information. Customer reserves all rights, title, and interest in and to Customer Supplied Material, including all related Intellectual Property Rights. No rights are granted to Company hereunder other than as expressly set forth herein.
- 6.5 **Grant of Customer Rights.** Customer hereby grants Company a royalty-free, non-transferable, non-exclusive, non-assignable right to use Customer Supplied Material and Customer Confidential Information solely during the term of this Agreement and for the sole purpose of rendering the Services hereunder.
- 6.6 **Suggestions.** Company shall have a paid-up, royalty-free, worldwide, irrevocable, perpetual, transferable, sub-licensable license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including its Users, relating to the operation of the Services ("Input"). Company shall have no obligation to make Customer Input an Improvement. Customer shall have no obligation to provide Customer Input.

7. CONFIDENTIALITY

- 7.1 **Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer Confidential Information shall include Customer Data; Company's Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Customer Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 7.2 **Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.
- 7.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party,



and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8. WARRANTIES AND DISCLAIMERS

- 8.1 **Company Warranties.** Company warrants that (i) it has validly entered into this Agreement and has the legal power to do so, (ii) the Services shall perform materially in accordance with the user guide available on-line or provided to Customer, (iii) subject to Section 4.7 (Integration with Non-Company Applications), the functionality of the Services will not be materially decreased during Subscription term, (iv) it will not transmit Malicious Code to Customer, provided it is not a breach of this subpart, if Customer or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code, and (v) Professional Services will be performed in a professional and workmanlike manner, in accordance with generally accepted industry standards. For any breach of a warranty above, Customer's exclusive remedy shall be as provided in Section 11.4 (Termination for Cause) and Section 11.5 (Refund or Payment upon Termination) below.
- 8.2 **Customer Warranties.** Customer warrant that Customer has validly entered into this Agreement and has the legal power to do so.
- 8.3 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR GIVES ANY WARRANTIES AND/OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, INCLUDING ANY REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- 8.4 **Non-GA Services.** From time to time Company may invite Customer to try, at no charge, its products or services that are not generally available to its customers ("**Non-GA Services**"). Customer may accept or decline any such trial in Customer's sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. NON-GA SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF ANY KIND. Company may discontinue Non-GA Services at any time in its sole discretion and may never make them generally available. Non-GA Services constitute Company Confidential Information.

9. MUTUAL INDEMNIFICATION

- 9.1 **Indemnification by Company.** Company shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "**Claim Against Customer**"), and shall indemnify Customer for any damages, attorney fees and costs finally awarded against Customer as a result of, and for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer; provided that Customer (a) promptly give Company written notice of the Claim Against Customer; (b) give Company sole control of the defense and settlement of the Claim Against Customer (provided that Company may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provide to Company all reasonable assistance, at Company's expense. In the event of a Claim Against Customer, or if Company reasonably believes the Services may infringe or misappropriate, Company may in its discretion and at no cost to Customer (i) modify the Services so that they no longer infringe or misappropriate, without breaching its warranties under "Company Warranties" above, (ii) obtain a license for Customer's continued use of the



Services in accordance with this Agreement, or (iii) terminate Customer's Subscriptions for such Services upon 30 days' written notice and refund to Customer any prepaid fees covering the remainder of the term of such Subscriptions after the effective date of termination.

Company shall have no liability for any Claim of infringement or misappropriation to the extent that (i) the Claim is based on Customer Data, Customer Supplied Material or Non-Company Applications, (ii) such Claim is based upon Customer's use of a superseded or altered version of some or all of the Services if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered release of the Services which was provided to Customer, or (iii) the Services are used outside the scope of any right or license granted in respect to such Services.

9.2 **Indemnification by Customer.** Customer shall defend Company against any claim, demand, suit or proceeding made or brought against Company by a third party alleging that Customer Data, Customer Supplied Material, or Customer's use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim Against Company"), and shall indemnify Company for any damages, attorney fees and costs finally awarded against Company as a result of, or for any amounts paid by Company under a court-approved settlement of, a Claim Against Company; provided that Company (a) promptly give Customer written notice of the Claim Against Company; (b) give Customer sole control of the defense and settlement of the Claim Against Company (provided that Customer may not settle any Claim Against Company unless the settlement unconditionally releases Company of all liability); and (c) provide to Customer all reasonable assistance, at Customer's expense.

9.3 **Exclusive Remedy.** This Section 9 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

10. LIMITATION OF LIABILITY

10.1 **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL FEES PAID BY CUSTOMER HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM (SUCH AMOUNT BEING INTENDED AS A CUMULATIVE CAP AND NOT PER INCIDENT), THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT).

10.2 **Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

11. TERM AND TERMINATION

11.1 **Term of Agreement.** This Agreement commences on the Effective Date and continues until all Order Forms issued under this Agreement have expired or been terminated.

11.2 **Term of Purchased Subscription Services.** Subscriptions purchased by Customer commence on the start date specified in the applicable Order Form and continue for the Subscription term specified therein. Except as otherwise specified in the applicable Order Form, all Subscriptions shall automatically renew for additional periods equal to the expiring Subscription term or one year (whichever is shorter), unless either party gives the



other written notice of non-renewal at least 30 days before the end of the relevant Subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless Company has given Customer written notice of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. Any such pricing increase shall not exceed 7% of the pricing for the relevant Services in the immediately prior Subscription term unless the pricing in such prior term was designated in the relevant Order Form as **promotional or one-time**.

- 11.3 **Term of Professional Services.** Professional Services shall commence on the date or at the time set forth in the Order Form.
- 11.4 **Termination for Cause.** A party may terminate this Agreement for cause upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period. Consent to extend the cure period shall not be unreasonably withheld, so long as the breaching party has commenced cure during the thirty (30) day period and is pursuing such cure diligently and in good faith.
- 11.5 **Refund or Payment upon Termination.** Upon any termination for cause by Customer, Company shall refund Customer any prepaid fees covering the remainder of the term of all Subscriptions after the effective date of termination. Upon any termination for cause by Company, Customer shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Company for the period prior to the effective date of termination.
- 11.6 **Termination for Insolvency.** A party may terminate this Agreement upon notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.
- 11.7 **Failure to Make Payment.** Notwithstanding anything in this Section 11 to the contrary, if Customer fail to make payment on any due date, Company shall have the right to suspend Services hereunder and, if such failure to make payment has not been cured within thirty (30) days of the due date, upon written notice terminate this Agreement and any or all outstanding Order Forms hereunder.
- 11.8 **Effect of Termination.** Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Customer of its obligation to pay all charges and expenses accruing prior to such termination..
- 11.9 **Return of Customer Data.** Upon request by Customer made within 30 days after the effective date of termination of a Purchased Services Subscription, Company will make available to Customer for download a file of Customer Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, Company shall have no obligation to maintain or provide any of Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in Company's systems or otherwise in Company's possession or under its control.
- 11.10 **Surviving Provisions.** Section 5 (Fees and Payment), 6.1 (Company Ownership), 6.4 (Customer Ownership), 6.6 (Suggestions), 7 (Confidentiality), 8 (Warranties and Disclaimer), 9 (Mutual Indemnification), 10 (Limitation of Liability), 11.5 (Refund or Payment upon Termination), 11.8 (Effect of Termination) 11.9 (Return of Customer Data), 13 (Notices), and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

12. GENERAL

- 12.1 **Cooperation; Delays.** Each party agrees to cooperate reasonably and in good faith with the other in the performance of the Professional Services and acknowledges that delays may otherwise result.



Customer is also responsible for the following: (i) assigning a dedicated internal project manager for each Order Form to serve as a single point of contact for Company; (ii) defining and maintaining its business objectives and requirements that will guide its use of the Company application; (iii) reviewing customizations made to Company application for conformance with relevant requirements; (iv) except where the relevant Order Form provides otherwise, training its users generally in the use of the Company application; and (v) administering the Company application generally for its own internal business purposes.

Each party agrees its respective employees and agents will reasonably and in good faith cooperate with each other in a professional and courteous manner in the performance of their duties under this Agreement. Either party may suspend performance hereunder immediately upon written notice should the other party's employees or agents fail to act accordingly.

Except where the relevant Order Form provides otherwise, scheduling of Company's resources must be agreed to no later than ten (10) business days prior to the date work is scheduled to begin. Subsequent scheduling of changes requested by Customer may result in additional fees. Delays caused by Customer under an Order Form to which Company has dedicated resources and begun work will be billed to Customer as follows: (i) offsite planned resources will be billed at 50% of the planned hours during the period of the delay; and (ii) onsite planned resources will be billed at 100% of the planned hours during the period of the delay (maximum of 8 hours per business day). Delays caused by Customer that exceed ten (10) business days shall entitle Company to terminate the relevant Order Form for cause immediately upon written notice.

- 12.2 **Acceptance.** Upon completion of each deliverable under an Order Form, Company will provide a complete copy thereof to Customer and, upon request, demonstrate to Customer its functionality in conformance with the relevant specifications. Customer is responsible for conducting any additional review or testing of such deliverable pursuant to any applicable acceptance criteria or test suites agreed upon by the parties for such deliverable.

If Customer, in reasonable and good faith judgment determines that any submitted deliverable does not meet the applicable functional requirements set forth for such deliverable in the relevant Order Form, Customer must notify Company within ten (10) business days after Company's submission of the deliverable to give written notice to Company specifying any deficiencies in detail. Company shall use commercially reasonable efforts to promptly cure any such deficiencies within twenty (20) business days of such notice and then resubmit the deliverable for further review and acceptance testing in the same manner. Should any deliverable fail to satisfy the applicable functional requirements after the second resubmission of such deliverable to Customer, Customer may (i) again reject the deliverable and return it to Company for further cure and resubmission; or (ii) terminate the relevant Order for cause immediately upon written notice and recover all Professional Services fees associated with such deficient deliverable. Notwithstanding the foregoing, in the event the applicable functional requirements as stated in the Order are subsequently determined by the parties to be inappropriate or to require modification due to changed circumstances, incorrect assumptions or other reasons at the time of actual delivery and testing of a deliverable, the parties shall cooperate in good faith to appropriately modify such requirements.

Customer shall provide Company a written acceptance of each deliverable promptly upon acceptance. Failure to reject a deliverable within the applicable acceptance period shall be deemed acceptance of such deliverable.

- 12.3 **Changes to Scope.** Any changes to the scope of work under an Order Form shall be made by written change order or amendment to the Order Form signed by an authorized representative of each party prior to implementation of such changes.

13. NOTICES

- 13.1 **Notices.**



If to Company:

International Data Base Corporation DBA Bidnet

15 British American Blvd, Latham, NY 12110

Attention:

Vice President eProcurement Customer Success,
legal@mdfcommerce.com**If to Customer:**

Contra Costa County

40 Muir Road, 2nd Floor

Martinez, CA, 94553

Attention:

carolyn.halstenson@pw.cccounty.us

Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to Customer shall be addressed to the relevant billing contact designated by Customer. Each party may change its address and recipient by notice to the other party.

14. GENERAL PROVISIONS

- 14.1 **Export Compliance.** The Services, other technology Company makes available, and derivatives thereof may be subject to export laws and regulations of the United States, Canada, and other jurisdictions. Each party represents that it is not named on any U.S. or Canadian government denied-party list. Customer shall not permit Users to access or use Services in a U.S. or Canadian-embargoed country or in violation of any U.S. or Canadian export law or regulation. Customer shall not use the Service or any related information for any purposes prohibited by export laws and/or regulations, including, without limitation, nuclear, chemical, or biological weapons proliferation.
- 14.2 **DFARS.** If Customer is a U.S. governmental entity, the Services and any documentation provided by Company are deemed to be "commercial computer software" and "commercial computer software documentation" pursuant to Defense Federal Acquisition Regulation Supplement, codified under Chapter 2 of Title 48, United States Code of Federal Regulations, Section 227.7202, and Federal Acquisition Regulation, codified in Title 48 of the United States Code of Federal Regulations, Section 12.12. Any use, modification, reproduction, release, performance, display, or disclosure of the Software or documentation by the United States Government is governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement.
- 14.3 **Anti-Corruption.** Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Company's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Company in writing.



- 14.4 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 14.5 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 14.6 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 14.7 **Attorney Fees.** Customer shall pay on demand all Company's reasonable attorney fees and other costs incurred by Company to collect any fees or charges due to Company under this Agreement following Customer's breach of Section 5.3 (Invoicing and Payment).
- 14.8 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, Company shall refund to Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 14.9 **Language.** The parties have requested that this Agreement be drafted in the English language. Les parties ont demandé que cette entente soit rédigée en anglais.
- 14.10 **Force Majeure.** Neither party shall be responsible for its failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including but not limited to acts of God, wars, terrorism, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, or strikes, labor problems (other than those involving the employees of the affected party), or delays involving hardware, software or power systems not within a party's possession or reasonable control, provided that such party gives the other party prompt written notice of the failure to perform and the reason therefore and uses its reasonable efforts to limit the resulting delay in its performance.
- 14.11 **Waiver.** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or any infringement, misappropriation, or breach in respect to either party's intellectual property rights, no action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.
- 14.12 **Governing Law and Jurisdiction.** If Customer is a U.S. entity the governing law shall be the State of California, USA and each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. If Customer is a Canadian entity the governing law shall be the Province of Quebec, Canada. Each party irrevocably submits to the exclusive jurisdiction of the courts of the aforementioned applicable jurisdiction, and each party agrees to the applicable law above without regard to rules regarding choice of law or conflicts of law.
- 14.13 **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals, or



representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum, Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Contra Costa County Purchasing

By: _____

Name: _____

Title: _____

International Data Base Corp (DBA Bidnet)

By: _____

Name: Mark Eigenbauer

Title: President



Exhibit A - SERVICE LEVEL AGREEMENT

SECTION 1: INTRODUCTION

This Exhibit sets forth service performance levels and defines procedures pertaining to the Services provided by the Company. Additionally, it describes the performance indicators by which performance levels will be measured and the remedies that will be available, scheduled maintenance, and notification procedures involving support events.

SECTION 2: SOLUTION SEVERITY ISSUES AND RESOLUTION

The service parameters set forth below are the responsibility of the Company in the ongoing support of its performance under this Agreement.

2.1 ISSUE SEVERITY LEVELS

The category of an issue is based on the following definitions and as outlined in Attachment A.

2.1.1 Severity One

Critical Service Impact. Customer's production use of Company's products on a primary business service, major application or mission-critical system is stopped or so severely impacted that the customer cannot reasonably continue work.

Severity Level 1 problems are handled as the highest priority until the customer is given a fix or workaround.

2.1.2 Severity Two

Significant Service or Implementation Impact. Important product features are unavailable with no reasonable workaround. Customer's production use of Company's products in a primary business service, major applications or mission critical systems are functioning with limited capabilities or are unstable with periodic interruptions. The software may be operating but is severely restricted.

2.1.3 Severity Three

Product features are unavailable, but a reasonable workaround exists, and most software functions are still useable. Minor function/feature failure that the customer can easily circumvent or avoid. Customer's work has minor loss of operational functionality. No data has been lost, and the business service, application, or system is still functioning.

2.1.4 Severity Four

Minor problem or question that does not affect the software function such as How To's, documentation, general questions, or enhancement requests. There is no impact to product usage or customer's operations.

2.1.5 Resolution Categories



Company shall categorize the resolution of the issues as follows:

- **Answered** – the issue was simply a question that was answered.
- **Fixed** – the issue was addressed.
- **Works as Designed** – the issue as described is working as intended and is not a defect.
- **Cannot Reproduce** – the issue reported, despite testing and investigation cannot be reproduced to further determine cause. These issues are ultimately closed but can be reopened if recurrence happens.
- **Enhancement Request** – Customer has reported a suggested enhancement for consideration for inclusion in a future build. These tickets transferred to Product Development.

2.1.6 Notification

Company will notify the Customer anytime the Solution is not available as soon as practical.

2.1.7 Notification Response

Company shall respond to all issues based on Severity Level as follows:

- **Severity 1 Response:** Company shall begin resolution efforts upon awareness of an issue and continue until resolved. Company shall respond to the requestor within 1 business hour of being notified of an issue.
- **Severity 2 Response:** Company shall respond to the requestor with 4 business hours of being notified of an issue.
- **Severity 3 Response:** Company shall respond to the requestor within 8 business hours of being notified of an issue.
- **Severity 4 Response:** Company shall respond to the requestor within 24 hours of being notified of an issue.

2.18 Resolution

Company's issue resolution time will be based on Severity Level as follows:

- **Severity 1** – Company shall develop a resolution plan, notify Customer, and shall restore service within 24 hours. Company shall begin resolution efforts upon receipt of notification and continue until resolved. If resolution requires a software correction, it is delivered as a Hotfix/service patch. The standard resolution time is as quickly as development can produce and test the correction.
- **Severity 2** – Company shall resolve environmental issues within 24 hours or provide Hotfix/service patch within 10 business days. Company will work to provide a reasonable work around, when available, until the hotfix/service is permanent.
- **Severity 3** – Company shall resolve all Severity 3 issues within the next two releases, from date of notice.
- **Severity 4** – Company will consider all Severity 4 issues within the product roadmap.

Once an issue is resolved as defined in 2.1.5 and communicated as such to the Customer, it will be considered closed if no issues are reported within 5 days.



2.1.9 Product Releases

Product Releases will be issued following Contactor's annual release schedule:

- Online release notes will be available to the Customer 7 days prior to release.
- The Learn environment will be updated with the production release to maintain consistency.

Company may, on a periodic basis, make changes to the release schedule.

2.1.10 Scheduled Maintenance

Scheduled maintenance for production systems is during non-business hours.

Company will make every effort to communicate scheduled maintenance periods at least 7 business days in advance of planned maintenance performed on the Solution.

Emergency or unscheduled maintenance may be required for Company to perform mission-critical system fixes or issues that are beyond Company's control. Company will notify the Customer as soon as practicable if emergency or unscheduled maintenance is required.

2.1.11 Disaster Recovery

Company will provide Disaster Recovery services as follows:

- RPO (Recovery Point Objective) of no more than 1 hour of lost data and, RTO (Recovery Time Objective) within 24 hours of outage as part of the services provided Company will provide disaster recovery and business continuity capabilities in the event of a disaster.

The above disaster recovery and business continuity criteria will be in effect only in the event a disaster is declared at the primary site and the Solution is transitioned from the primary site to the disaster recovery secondary site.

SECTION 3: SERVICES

The support parameters set forth below are the responsibility of the Company in the ongoing support of its performance under this Agreement.

3.1 SUPPORT**3.1.1 Company Support Desk**

Company shall provide the following Support Desk services to Users:



- Various support channels to report issues: Available 24 hours a day, 7 days a week; monitored during business hours (Monday-Friday 8:00 AM – 8:00 PM Eastern Time excluding Company holidays).
- Ability to contact call center to report technical and functional issues during business hours.
- An easily accessible frequently asked question list and a technical and functional team available during business hours.
- Ability to access online functional help tools such as quick reference guide



ATTACHMENT A, SEVERITY LEVEL DEFINITIONS AND MANAGEMENT

Level	Impact	Events	Workaround	Initial Response	Resolution Goal
Sev 1 Critical Service Impact	Customer's production use of our products on a primary business service, major application or mission-critical system is stopped or so severely impacted that the customer cannot reasonably continue work. For Severity Level 1 problems, Company shall begin resolution efforts upon awareness of an issue and continue until resolved and handle as the highest priority until the customer is given a fix or reasonable workaround.	1. Critical business functionality is not operational across agency and multiple Suppliers. 2. System crashes 3. Data integrity at risk including cross contamination of Prod data / configurations. 4. Backup and recovery options fail.	No Reasonable Workaround	Within 1 business hour	24 Hours (Plan within 4 hours)



Level	Impact	Events	Workaround	Initial Response	Resolution Goal
Sev 2 Significant Service or Implementation Impact	Important product features are unavailable with no reasonable workaround. Customer's implementation or production use of Company's products in a primary business service, major applications or mission critical systems are functioning with limited capabilities or are unstable with periodic interruptions. The software may be operating but is severely restricted.	1. Severely degraded performance 2. Product error or failure forcing a restart or recovery 3. Suppliers and/or Agencies are not able to view or respond to solicitations and/or contracts 4. Solicitation cannot be opened / submitted quotes cannot be viewed 5. Suppliers are not notified of relevant solicitations	No Reasonable Workaround	Within 4 business hours	Environments: 24 hours Code Change: 10 business days



Level	Impact	Events	Workaround	Initial Response	Resolution Goal
Sev 3 Minimal Service Impact	Product features are unavailable, but a reasonable workaround exists, and the majority of software functions are still useable. Minor function/feature failure that the customer can easily circumvent or avoid. Customer's work has minor loss of operational functionality. No data has been lost, and the business service, application, or system is still functioning.	1. Error message with workaround 2. Minimal performance degradation 3. Questions on product functionality or configuration during implementation	Reasonable Workaround Available	Within 8 business hours	Within the next two releases
Sev 4 No Service Impact	Minor problem or question that does not affect the software function such as How To's, documentation, general questions, or enhancement requests. There is no impact to product usage or customer's operations.	1. General requests for advice on product usage 2. Clarification on product documentation or release notes 3. Product enhancement request	NA	NA	No Commitment



