

# FMLASource®

## AGREEMENT

This Agreement sets forth the agreed upon terms and conditions surrounding FMLASource, Inc.'s ("FMLASource") delivery of Family and Medical Leave Act administration and information services to all employees of Milwaukee County (hereinafter referred to as "Client") to begin January 1, 2016 ("Commencement Date"). The terms and conditions are as follows:

- 1. Term:** Initial term of three (3) years for the delivery of Services to Client. After the expiration of the initial term (December 31, 2018), Client shall have the option to renew this Agreement for two successive one (1) year periods by providing FMLASource with at least sixty (60) days advance written notice prior to the expiration of the then current term.

Either party may terminate the Agreement at any time without cause upon providing ninety (90) days advance written notice to the other party.

- 2. Fees:**

(A) A price of \$1.45 per employee per month. Client represents that as of the Commencement Date it has approximately 4,750 employees located in the United States. Client agrees to provide FMLASource with annually updated employee counts prior to the anniversary of the Commencement Date, and FMLASource will invoice Client. Fees to be paid by Client to FMLASource shall be adjusted to reflect the updated employee counts, but not to exceed \$96,798 annually. Payment for services is due within thirty (30) days of Client's receipt of an invoice. In the event that any payment due FMLASource hereunder is not received by FMLASource from Client when due, a delinquency charge shall be assessed on each installment assessed in default for not less than five days in an amount not to exceed five percent (5%) for each month the installment remains unpaid or the maximum amount allowed by law, in addition to attorney's fees and other costs and expenses incurred by FMLASource to collect any amounts due hereunder. FMLASource reserves the right to amend its fees in the event of any program or administrative changes due to state or federal law and will provide Client with a minimum of ninety days notice prior to the expiration of the applicable term. Notwithstanding the foregoing, in the event Client's employee population increases or FLMASource amends its fees due to state or federal law such that the annual budget is insufficient, Client agrees to attempt to obtain additional budget amounts to address the increased population or increased fees.

- 3. Exclusivity:** During the term of this Agreement, Client warrants that FMLASource shall be the exclusive provider of the services under this Agreement to all employees of Client.
- 4. Services:** Services shall include those services described on Schedule I attached hereto. Client understands that it is entitled to standard FMLA services pursuant to the terms and conditions of this Agreement. In the event Client desires to customize services, Client agrees to pay all costs incurred by FMLASource to effectuate such customizations, including, but not limited to, charges associated with software programming, web-site development or process adjustments.
- 5. Eligibility Files:** Client shall use its best efforts to provide FMLASource with complete and accurate employee eligibility files on a monthly basis. Client understands and agrees that FMLASource shall not be liable for any claims or losses resulting from or related to Client's failure to provide such files or from Client's provision of incomplete or inaccurate eligibility files.

- 6. Force Majeure:** No failure, delay or default in performance of any obligation of FMLASource shall constitute an event of default or breach of the Agreement to the extent that such failure to perform, delay or default arises out of a cause, existing or future, that is beyond the control and without negligence of FMLASource, including, but not limited to: action or inaction of governmental, civil or military authority; fire, strike, lockout or other labor dispute; flood, war; terrorism; riot; theft; earthquake and other natural disaster.
- 7. Notices:** Any notice required hereunder will not be effective, unless in writing, signed by an authorized officer of the party delivering such notice, and sent by certified mail or recognized overnight carrier to the signatories below.
- 8. Facsimile or Scan/Counterparts:** Facsimile or electronically scanned transmission of an executed copy of this Agreement or any amendments hereto shall be accepted as evidence of a party's execution of the Agreement or amendment. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.
- 9. Severability:** If and to the extent any provision of this Agreement is held illegal, invalid or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid or unenforceable to the extent of its illegality, invalidity or unenforceability and will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity or unenforceability of such provision in that jurisdiction will not affect the legality, validity or enforceability of such provision or any other provisions of this Agreement in any other jurisdiction.
- 10. Clause Headings:** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the clauses to which they appertain.
- 11. Employment Decisions:** Client understands that decisions made by FMLASource regarding FMLA eligibility shall not be deemed by Client to be a recommendation, suggestion or determination to take any employment action against an employee. Client agrees to seek legal counsel prior to making any adverse employment determinations.
- 12. Relationship of the Parties:** FMLASource and Client agree that FMLASource is an independent contractor and neither party nor their respective employees or agents shall be deemed to be an employee of the other, nor shall this Agreement be deemed to create a partnership, joint venture, agency relationship or other association between the parties hereto.
- 13. No Third Party Beneficiaries:** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity other than Client and FMLASource any rights, remedies, obligations, or liabilities whatsoever, whether in contract, statute, tort (such as negligence) or otherwise, and no person or entity shall be deemed a third-party beneficiary under or by reason of this Agreement.
- 14. Indemnification:** FMLASource shall indemnify and hold harmless Client from and against third party claims resulting solely from or arising out of FMLASource's negligence or willful misconduct relating to the services provided hereunder by FMLASource. FMLASource's obligation to indemnify Client will only apply if Client notifies FMLASource, in writing, as to any such claim and gives FMLASource the right to control and direct the investigation, preparation, defense, trial and settlement of each such claim. Client will reasonably cooperate with FMLASource in the defense and/or settlement of any such claim.

Client shall indemnify and hold harmless FMLASource from and against third party claims resulting solely from or arising out of Client's negligence or willful misconduct or employment-related decisions. Client's obligation to indemnify FMLASource will only apply if FMLASource notifies Client, in writing, as to any such claim and gives Client the right to control and direct the investigation, preparation, defense, trial and settlement of each such claim. FMLASource will reasonably cooperate with Client in the defense and/or settlement of any such claim.

The indemnification obligations of FMLASource and Client shall terminate upon the expiration of the Agreement except as to any matter concerning which a claim has been asserted by notice to the other party at the time of such expiration or within 365 days after effective date of Agreement termination.

**15. Limitation of Liability:** NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, FMLASOURCE SHALL NOT BE LIABLE, WHETHER UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY AMOUNTS IN EXCESS OF THE FEES AND CHARGES PAID BY CLIENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO ANY LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES EVEN IF A PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY IN CONNECTION WITH ANY THIRD PARTY CLAIMS RELATED SOLELY TO A DECISION MADE BY FMLASOURCE. FOR AVOIDANCE OF DOUBT, THIS LIMITATION SHALL APPLY WITH RESPECT TO ANY EMPLOYMENT RELATED DECISION MADE BY CLIENT.

**16. Insurance.** FMLASource shall purchase and maintain policies of insurance to cover costs as may arise from claims of tort, statutes, and benefits under Workers' Compensation laws, as respects damage to persons or property and third parties in such coverages and amounts as required and approved by the County Director of Risk Management and Insurance. Acceptable proof of such coverages shall be furnished to the Director of Risk Management and Insurance prior to services commenced under this Contract.

It is understood and agreed that FMLASource shall obtain information on the professional liability coverages of all sub-consultants and/or sub-contractors in the same form as specified above for review of the County.

<b>Type of Coverage</b>	<b>Minimum Limits</b>
<b>Wisconsin Workers' Compensation</b>	Statutory (Waiver of Subrogation for Workers Comp by Endorsement)
<b>Employer's Liability</b>	\$100,000/\$500,000/\$100,000
<b>Commercial Or Comprehensive General Liability</b>	
General Aggregate	\$1,000,000 Per Occurrence
Bodily Injury & Property Damage	\$1,000,000 Aggregate
Personal Injury	\$1,000,000 Per Person
Contractual Liability	\$1,000,000 Per Occurrence
Fire Legal Liability	\$50,000 Per Occurrence
Cyber Liability	\$1,000,000 Aggregate
<b>Automobile Liability</b>	
Bodily Injury & Property Damage	\$1,000,000 Per Accident
All Autos-Owned, non-owned Uninsured Motorists	Per Wisconsin Requirements

Client, as its interests may appear, shall be named as an additional insured for general, automobile, as respects the services provided in this Contract. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. Notice of cancellation, nonrenewal, or material change shall be afforded to the county in accordance with the provisions of the policies.

The insurance specified above shall be placed with at least an A-/VIII rated carrier per Best's Rating Guide approved to do business in the State of Wisconsin. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by the County Director of Risk Management and Insurance as a condition of this Contract. Waivers may be granted when surplus lines and specialty carriers are used.

A Certificate of Insurance shall be submitted for review to the County for each successive period of coverage for the duration of this Contract

**17. Audit and Inspection of Records.** For a period up to three years after the completion of the Agreement, FMLASource shall permit the authorized representatives of Client, after reasonable notice, to inspect and audit data and records of FMLASource directly related to this agreement.

**18. Public Records.** FMLASource understands Client is bound by the public records law, and as such, all of the terms of this agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* FMLASource hereby agrees that it shall be obligated to assist Client in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this agreement, whereupon FMLASource shall then and in such event be obligated to indemnify, defend and hold Client harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the Client in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under this agreement

**19. Disadvantaged Business Enterprises.** FMLASource shall comply with CFR 49 Part 26 and Chapter 42 of the Milwaukee County Ordinances which requires Good Faith Efforts (GFE) to achieve participation of Certified Disadvantaged Business Enterprise (DBE\*) firms on all USDOT and Client funded professional service contracts. In accordance with this Client policy and USDOT requirements, FMLASource shall ensure that DBEs have an opportunity to participate in this contract.

FMLASource shall utilize DBE firms to a minimum of 0% of the total contract. DBE participation requirement relative to contract award shall be based upon the approved Client Commitment to Subcontract to DBE Firms (DBD-014ps form).

The term "DBE" means small business concerns known as a Disadvantaged Business Enterprise (DBE) firms owned at least 51% by socially and economically disadvantaged individuals, and certified by Client under CFR49 Part 26

**20. Code of Ethics.** FMLASource hereby attests that it is familiar with Client's Code of Ethics which states, in part: "No person may offer to give to any County Officer or employee or his/her immediate family, and no County Officer or his/her immediate family may solicit or receive anything of value pursuant to an understanding that such officers or employees vote, official action or judgment would be influenced thereby."

FMLASource during the period of this agreement shall not hire, retain or use for compensation any member, officer, or employee of the Client or any person who, to the knowledge of FMLASource, has a conflict of interest.

**21. Jurisdiction:** This Agreement shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin. This agreement, together with the Schedules attached hereto, constitutes the entire understanding between the parties and is not subject to amendment unless agreed upon in writing by both parties hereunder in compliance with all applicable state, local, or federal laws, rules, regulations, and orders. This agreement and each party's rights and obligations under it will be governed by and construed in accordance with the laws of Wisconsin, without giving effect to conflicts of law principles.



Please sign below to acknowledge Client's acceptance of these terms.

Sincerely,

Dr. Richard A. Chaifetz  
Chairman and CEO

Milwaukee County

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Additional Required Milwaukee County Authorizations:**

**Community Business Development Partners**

Sign \_\_\_\_\_ Date \_\_\_\_\_

**Risk Management**

Sign \_\_\_\_\_ Date \_\_\_\_\_

**Corporation Counsel**

Sign \_\_\_\_\_ Date \_\_\_\_\_

**Milwaukee County Comptroller**

Sign \_\_\_\_\_ Date \_\_\_\_\_

**Milwaukee County Executive**

Sign \_\_\_\_\_ Date \_\_\_\_\_

## **SCHEDULE I COVERED SERVICES**

The Request for Proposal issued by Client on April 13, 2015 and the proposal response provided by FMLASource on May 15, 2015 are hereby incorporated into this Schedule I as Exhibits A and B respectively.

- **Account Management:** FMLASource will assign Client an account manager who will serve as the contact person and provide Client with reports and feedback on the Services.
  
- **Service Access:** Toll-free access to FMLA experts.
  
- **FMLA Administration:** FMLASource will provide the following administrative services:
  - a) Receive leave requests.
  - b) Administer FMLA eligibility based on Client's guidelines. Any administrative decisions outside of the guidelines shall be referred to Client for final determination. FMLASource shall utilize its own medical certification forms to certify leaves of absence.
  - c) Issue legally required notifications, all based on Client's procedural guidelines.
  - d) Maintain and update the FMLA eligibility database based on information provided by Client.

**SCHEDULE II  
PERFORMANCE GUARANTEES**

Performance guarantees will be measured annually for determination of whether a penalty amount will be credited, not to exceed a ten percent (10%) credit of administrative fees paid by Client during the most recent completed contract year. Reconciliation of performance guarantees shall occur within sixty (60) days after the end of each contract year.

CATEGORY	SERVICE LEVEL & MEASUREMENT	PENALTY (as a % of Fees)
Completion of Claim Intake	99% of claim intakes completed within two business days. Divide total number of claim intakes by total number of claim intakes completed within two business days.	2%
Determination of Leave Eligibility	99% of leave eligibility determined within two business days. No penalty will be applied in the event Client provides incomplete or untimely eligibility information. Divide total number of eligibility determinations by the eligibility determinations that were made within two business days.	2%
Notification to Employee of Eligibility	99% of employee eligibility notifications sent within two business days after eligibility determination, where applicable. Divide total number of employee eligibility notifications by the number of employee eligibility notifications that were made within two business days after the eligibility determination.	1%
Medical Certification Processing	98% of medical certifications will be processed within three business days from receipt. Divide total number of processed medical certifications by the number of medical certifications that were processed within three business days.	1%
Leave Approval or Denial Decision	98% of leave approval or denial decisions will be made within three business days after receipt of adequate information to make a decision. Adequate information may be via receipt of sufficient documentation or, when documentation is not received, within three business days after the documentation due date, or for leaves that require approval by the employer (e.g., ADA or some company leaves), Client's decision communicated to FMLASource. Divide total number of leave approvals/denials decisions by the total number of leave approvals/denial decisions made within the applicable three business day period. FMLASource shall not be penalized if any delay is caused, in whole or in part, by Client.	1%
Responsiveness	FMLASource will return 99% of employee contacts within two business days	1%
Notification to Employee of Decision	98% of employee decision notifications sent within three business days after receipt of adequate information to make a decision, where applicable. Divide total number of employee decision notifications by the number of employee decision notifications that were made within two business days after the receipt of adequate information.	1%
Accuracy of Leave Determinations (defined as verification of eligibility, correct decision, tracking completed)	98% accuracy. Divide total number of leave determinations by the number of leave determinations accurately processed.	1%