



SERVICES AGREEMENT

This Services Agreement (this "Agreement") is entered into as of February 28, 2003, (the "Effective Date") by and between Neoforma, Inc., a Delaware corporation, located at 3061 Zanker Road, San Jose, CA 95134 ("Neoforma"), and County of San Mateo, San Mateo Medical Center ("Customer").

RECITALS

Whereas, Neoforma desires to provide professional services to Customer and Customer desires to receive professional services in accordance with the terms and conditions of this Agreement and in conjunction with Application Service Provider ("ASP") services provided by Neoforma.

AGREEMENT

Now, Therefore, in consideration of the foregoing and the mutual promises contained in this Agreement, the adequacy of which consideration is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

"Access Agreement" means the agreement between Customer and Neoforma pursuant to which Neoforma provides ASP services to Customer.

"Access Services" means the ASP services provided by Neoforma to Customer pursuant to the Access Agreement.

"Consulting Services" means services requested by Customer and provided to Customer 30 days after the effective date of the Access Agreement (or later), which assist Customer with the optimization of its use of the Access Services.

"Customization Services" means services requested by Customer, pursuant to which Neoforma, or a Neoforma designee, makes modifications to the Access Services or to Customer systems, including but not limited to any enhancements in functionality, re-configurations, integration, development of code or application programming interfaces.

"Implementation Services" means the implementation and training services requested by Customer and provided to Customer 30 days after the effective date of the Access Agreement (or earlier), which assist Customer in initiating its use of the Access Services. (Exhibit B provides a description of a standard set of Implementation Services which are available upon request to Customer).

"Professional Services" means, collectively, the Implementation Services, Consulting Services and Customization Services, as well as the sale of any hardware.

"Support Services" means Neoforma's helpdesk support services, provided to Customer under the Access Agreement. Support Services do not include Implementation Services, Consulting Services or Customization Services.

2. PROFESSIONAL SERVICES. Customer is responsible for initiating its use of the Access Services at its cost and expense. Subject to the payment of fees in accordance with Section 4, Neoforma will provide Professional Services in conjunction with Customer's use of Access Services. Neoforma does not provide Support Services under this Agreement. Except as expressly provided herein or agreed to in writing by Neoforma and Customer, Customer will pay all costs and expenses incurred in the performance of its obligations under this Agreement.

3. INTELLECTUAL PROPERTY RIGHTS. All right, title, and interest in and to the products of the Professional Services (including but not limited to any software or code provided or created therewith), including without limitation all patents, copyrights, trade secrets, trademarks, and other intellectual property and proprietary rights therein are the sole and exclusive property of Neoforma, regardless of whether any of the foregoing results from feedback or input from Customer. Customer hereby assigns to Neoforma all right, title and interest it may have, now and in the future, in any of the foregoing, including but not limited to and any modifications, improvements, or derivative works of the same.

4. FEES.

4.1 Professional Service Fees. Customer shall pay the fees set forth in Exhibit A for Professional Services. In accordance with Exhibit A, Customer shall reimburse Neoforma for reasonable out-of-pocket costs and expenses (including meals, lodging, travel and transportation) incurred by Neoforma in providing Professional Services under this Agreement.

4.2 Taxes. All fees payable under this Agreement are net amounts and are payable in full, without any deduction for taxes or duties of any kind. Customer shall pay all national, state, or local excise, sales, use, withholding, value-added, or other taxes or duties (except for taxes based on Neoforma's net income) arising out of this Agreement.

4.3 Payment Terms. Customer will pay all fees, costs and expenses within 30 days of the date of receipt of invoice. For Professional Services, Neoforma will invoice 90% of the fees payable upon execution of this Agreement and the remaining 10% within 15 days of the completion of the Professional Services. For reasonable out-of-pocket costs and expenses (including meals, lodging, travel and transportation) incurred by Neoforma in providing Professional Services under this Agreement, Neoforma will invoice Customer within 15 days of incurring such costs and expenses. All payments are non-refundable. Late payments shall be subject to interest at a rate of 1.5% per month or the highest amount allowed by law, whichever is less, calculated from the date the applicable amount became due. Customer will reimburse Neoforma for the reasonable costs of collection, not including reasonable attorneys fees.

5. TERM AND TERMINATION.

5.1 Term. This Agreement shall terminate at the completion of the project.

5.2 Termination. Neoforma may immediately terminate this Agreement, upon written notice, in the event Customer breaches Section 4 and fails to cure such breach within 5 days written notice. If either party breaches any other material obligation under this Agreement, the non-breaching party may provide written notice to the breaching party indicating: (i) the basis of such breach with reference to the applicable provisions of this Agreement; and (ii) the non-breaching party's intention to terminate this Agreement. If the breach described in the previous sentence is not cured within 30 days after written notice thereof, the non-breaching party may terminate this Agreement upon written notice to the breaching party.

5.3 Effect of Termination. Neither party will be liable for damages of any kind as a result of exercising its right to terminate this Agreement according to its terms, and termination will not affect any other right or remedy at law or in equity. Upon any termination or expiration of this Agreement, all payments will immediately become due and payable and Customer will not be released from its payment obligations accrued before termination or expiration of this Agreement. The provisions of Sections 1, 3, 4, 5.3, 6, 7, and 8 will survive any termination or expiration of this Agreement.

6. WARRANTY DISCLAIMER. PROFESSIONAL SERVICES ARE PROVIDED "AS IS." NEOFORMA DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. THE FOREGOING DISCLAIMERS WILL APPLY EVEN IF ANY WARRANTY PROVIDED UNDER THIS AGREEMENT (IF ANY) FAILS OF ITS ESSENTIAL PURPOSE.

7. LIMITATION ON LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO OBTAIN PROFESSIONAL SERVICES, OR FOR DEFECTS IN THE PROFESSIONAL SERVICES, WHETHER SUCH LIABILITY ARISES FROM A CLAIM BASED UPON CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT WILL NEOFORMA'S LIABILITY TO CUSTOMER IN ANY ACTION RELATING TO OR ARISING FROM THIS AGREEMENT EXCEED THE AMOUNTS PAID HEREUNDER TO NEOFORMA WITHIN THE ONE-YEAR PERIOD PRECEDING THE EVENT LEADING TO LIABILITY. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

8. MISCELLANEOUS.

8.1 Assignment. Customer may not assign this Agreement, in whole or in part, without Neoforma's prior written consent. Any attempt by Customer to assign this Agreement other than as permitted above will be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of both parties, their successors and permitted assigns.

8.2 Agreement Confidentiality. Customer will keep confidential the terms and conditions of this Agreement, except to the extent required by law.

8.3 Notices. Any notice required or permitted to be sent under this Agreement shall be (i) in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, to the addresses indicated below or to such other address as provided in writing, and shall be deemed to have been received upon the earlier of actual receipt or 5 days after deposit in the mail; or (ii) sent by facsimile and deemed to have been received on the date of the facsimile confirmation if a copy of the notice is sent by certified mail (and postmarked on the date of facsimile transmission) in accordance with subsection (i) above. Notices shall be addressed to each party's legal department at the addresses specified above.

8.4 Force Majeure. Any delay in or failure of performance by a party of its obligations under this Agreement (except for payment obligations) will not be considered a breach of this Agreement and will be excused to the extent such delay or failure of performance is caused by any occurrence beyond the reasonable control of such party, which occurrences may include, but are not limited to, acts of God, blackouts, war, riot or labor strikes.

8.5 General Terms. The parties expressly agree that they are independent contractors and do not intend for this Agreement to be interpreted as an agency, joint venture or partnership relationship between the parties. Neither party's waiver of the breach of any provision shall constitute a waiver of the provision in that or any other instance. This Agreement will be governed by and construed in accordance with the laws of the state of California, without regard to or application of conflicts of law rules or principles. Any suit arising out of or related to this Agreement will be brought solely in the courts of San Francisco County, California, and the parties hereby expressly consent to the personal jurisdiction thereof and hereby waive all objections to venue therein. The substantially prevailing party in any dispute relating to this Agreement will be entitled to recover associated costs, not including reasonable attorney fees. This Agreement contains the entire understanding of the parties relating to its subject matter and supercedes all prior agreements and understandings, both written and oral, regarding such subject matter. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing, signed by both parties. If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall continue in full force and effect, and the parties shall substitute a valid provision with the same intent and economic effect. This Agreement may be executed in counterparts, each of which will be deemed an original. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party.

8.6 Merger Clause. This Agreement, including Exhibits "A" and "B" attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the County Purchasing Agent. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibits "A" and "B" attached hereto, the terms, conditions, or specifications set forth herein shall prevail. This Agreement, or facsimile proposal of the Agreement, constitutes the entire Agreement between County and Contractor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly designated and authorized representatives.

Neoforma, Inc.

By: Therese Grossi

Name: Therese Grossi

Title: Vice President, Provider Sales & Services

Date: February 7, 2003

Customer

By: _____

Name: Rose Jacobs Gibson, President

Title: Board of Supervisors, County of San Mateo

Date: February 25, 2003

EXHIBIT A

PROFESSIONAL SERVICE FEES

Implementation Service Fees

Order No.	Description of Products/Services	Price	Quantity	Total Implementation /Hardware Fees
04-1000I	Implementation services for PowerSync -- 6 days	\$25,000	1	\$25,000
01-1005	Handheld devices -- Symbol SPT 1800	\$1,400	3	\$4,200
01-1012AP	Accounts Payable Export	\$5,000	1	\$5,000
01-1012GL	General Ledger Export	\$5,000	1	\$5,000
	SUBTOTAL			\$39,200
	TAX (If Applicable)			
	TOTAL ONE TIME FEES			

EXHIBIT B

SAMPLE SET OF IMPLEMENTATION SERVICE DELIVERABLES

PowerSync Installation Services	Description of Service
Project Management	Duration of Project
Planning Session	Business processing, overview of system, fact finding, and file requirements for conversion and interfaces.
Data Conversion	Item Information <ul style="list-style-type: none">▪ Item Catalog▪ Item Vendor▪ Unit of Measure▪ Item Inventory Usage Information Par Areas Custom Requisitions Departments Vendors
Training	Detailed training in all areas of PowerSync will be provided during this class. After training class, the Client will continue to pilot the PowerSync system until the Client "go-live".
Interface/Validation	Interfaces will be tested and validated. Any changes required will be identified and modified for a second pass, if necessary.
Go-Live	The Client will have already validated any final item conversion and will perform a physical inventory. Any re-training may be done on this day.
Post Review	A follow-up may be necessary and will focus on any outstanding issues.

The following assumptions are that there is:

- One (1) organization.
- One (1) purchasing department.
- One (1) accounts payable department.
- One (1) inventory location.
- One (1) database for conversion.
- A train the trainer approach when ten (10) or more users require training.
- Some limitations with data conversion elements (this is based on some material management system platforms).



ACCESS AGREEMENT

This Access Agreement (this "Agreement") is entered into as of February 28, 2003, (the "Effective Date") by and between Neoforma, Inc., a Delaware corporation, located at 3061 Zanker Road, San Jose, CA 95134 ("Neoforma"), and County of San Mateo, San Mateo Medical Center ("Customer").

RECITALS

Whereas, Neoforma desires to provide Application Service Provider ("ASP") services to Customer and Customer desires to receive such services.

AGREEMENT

Now, Therefore, in consideration of the foregoing and the mutual promises contained in this Agreement, the adequacy of which consideration is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

"Professional Services" means services requested by Customer, which (i) assist Customer with initiating and optimizing its use of the Services; and (ii) provide additional functionalities to the Customer or enhance the functionality of the Services.

"Services" means the services provided by Neoforma to Customer as described in Exhibit A.

"Users" means each Customer employee or contractor that is authorized by Customer and Neoforma to use the Services.

"Consumer Price Index" means the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor (subtitle, All Urban Consumers (CPI-U); geographic area, U.S. City Average; index category, All Items; and index base period, 1982-84 = 100).

"Software" means the computer program (s) granted access to Customer under the Access Agreement and identified in Exhibit A, and any New Release, Update or Fix provided to Customer hereunder.

"Error (s)" means incorrect code in the Software that causes the Software to produce results that do not substantially conform with the Specification (s).

"Fix (s)" means a modification to the Software that causes the Software to produce results that substantially conform with the Specification (s).

"New Release" means a release of the Software which consists of a new version with enhancements, added functionality or new features, typically denoted by a change to the number to the left of the first decimal point (e.g., a change from 2.x to 3.x), for which Neoforma charges its customers who receive Support Service.

"Specification (s)" means Neoforma's written functional performance specifications for the Software.

"Support Services" means the support services required under Section 2.1.2.

"Technical Support Contact" means the technical support contact designated by Customer who meets the requirements of Section 2.1.2.

“Update” means a release of the Software that consists of minor corrections or Fixes and is typically denoted by a change to the characters to the right of the first decimal point (e.g., a change from 2.0 to 2.1 or from 2.1 to 2.1a).

“Workaround” means a procedure or routine that, when observed in the regular operation of the Software, eliminates any material adverse effect on Customer of an Error.

2. SERVICES.

2.1 Neoforma Responsibilities.

2.1.1 Provision of Services. Subject to the payment of fees in accordance with Section 4, Neoforma will provide access to the Services for the number of Users designated in Exhibit A. Users may access the Services solely from the locations designated in Exhibit A. Neoforma does not provide Professional Services pursuant to this Agreement. Customer will designate in writing a Technical Support Contact to act as Customer’s representative and will not change the designee without at least one (1) business day prior written notice to Neoforma. Such person shall be authorized by Customer to add additional Users, request Professional Services, determine access configurations and grant or revoke access to the Services for any User.

2.1.2 Support. Subject to the terms and conditions of this Agreement, Neoforma will provide the Support Services only to Customer and only for the types and number of Users for which Support Services are indicated and approved.

SUPPORT SERVICES

2.1.2.1 Help Desk Service. Neoforma will provide assistance and support via telephone and electronic mail concerning the use of the Software. The assistance and support will be provided only to the Technical Support Contact, and only during Neoforma’s normal business hours on a Neoforma work day, weekends and holidays excluded. Neoforma’s normal business hours as of the Effective Date are 6:00 a.m. to 8:00 p.m., Pacific Standard Time. All common carrier charges, and the cost of telephone and terminal equipment incurred by Customer shall be the responsibility of Customer.

2.1.2.2 Error Correction. Neoforma will use commercially reasonable efforts to correct documented and repeatable Errors in the current unmodified release of Software, in accordance with Section 2.1.2. Customer will immediately report any Error in sufficient detail to allow Neoforma to repeat the Error on Neoforma’s systems.

2.1.2.3 Updates. Neoforma will make all Updates to the accessed Software.

2.1.2.4 New Release. Neoforma will advise Customer of each New Release when it is made available to Neoforma’s other Users of the Software. Customer may access the use of each New Release at Neoforma’s then-current standard fee to be paid for such New Release by current Customers who are receiving Support Service. Payment of new standard fees for a New Release is not covered by the Support Service fee.

2.1.2.5 Additional Services. Neoforma is not required to provide Customer any support, maintenance or other services that are not expressly required by Sections 2.1.2.1 through 2.1.2.4. Without limiting the foregoing, any additional services provided to Customer by Neoforma are "Support Services" for purposes of this Agreement.

CUSTOMER RESPONSIBILITIES

2.1.2.6 Technical Support Contact. All requests for Support Services must come from the Technical Support Contact. Customer is responsible to ensure that the Technical Support Contact is at all times qualified, trained and available to competently and efficiently interface with Neoforma in the provision of Support Services.

TECHNICAL SUPPORT ESCALATION PROCEDURES

2.1.2.7 Error Correction. Neoforma shall exercise commercially reasonable efforts to correct any material Error reported by Customer in the current unmodified release of Software, in accordance with the priority level reasonably assigned to such Error by Neoforma and the technical support escalation procedures set forth in Exhibit B. An Error is deemed "corrected" when a Workaround or Fix provides operation of the system in such a manner that (i) the Error cannot be reproduced by Neoforma under conditions identical to those reported by Customer, and (ii) the same Error does not occur within the three (3) months following such Workaround or Fix.

2.1.3 Service Levels. Neoforma agrees to operate and maintain the Services so as to deliver at least 99.5% average uptime measured over any given one month period, not including failures of third party service providers or regularly scheduled downtime for maintenance and repair.

2.1.4 Data Archiving. Data and report images will be archived at reasonable intervals, at Customer's expense, to optimize system performance and disk utilization.

2.2 Customer Responsibilities.

2.2.1 Telecommunications. Customer acknowledges and agrees that its use of the Services requires adequate access to telecommunications facilities and access to the Internet. Customer shall be solely responsible for acquiring and maintaining all required Internet or telecommunications services in order to access and use the Services, including without limitation any costs, fees, expenses, and taxes of any kind related to the foregoing.

2.2.2 Acceptable Use Policies. Customer acknowledges (and will notify its Users) that Neoforma does not monitor transmissions made using the Services and that Neoforma shall not be responsible for the same. Customer will not (and will instruct its Users not to) transmit programs, extraneous code or viruses that may be reasonably expected to damage, misappropriate or interfere with the use of data, software or systems, or the operation of the Services. Customer will keep (and will instruct its Users to keep) confidential and not disclose the User's login IDs or passwords to third parties. In the event that a login ID or password is disclosed to any third party or otherwise compromised, Customer will promptly notify Neoforma. Customer acknowledges that the Services are not designed, intended or authorized for use where failure could lead to death or personal injury. Customer agrees (and will instruct its Users) not to use the Services under such circumstances.

2.3 Costs. Except as expressly provided herein or agreed to in writing by Neoforma and Customer, Customer will pay all costs and expenses incurred in the performance of its obligations under this Agreement.

3. INTELLECTUAL PROPERTY RIGHTS. All right, title, and interest in and to the Services (and any software or code provided therewith), including without limitation all patents, copyrights, trade secrets, trademarks, and other intellectual property and proprietary rights therein are the sole and exclusive property of Neoforma and its licensors. Neoforma does not transfer or assign any rights with respect to the foregoing.

4. FEES.

4.1 Access Fees. Payment to Access the Services ("Access Fees"), as described in Exhibit A, is due quarterly, based on a calendar quarter, in advance on the first day of the first month of the applicable quarter. A partial Access Fee will be charged for the period from the Effective Date to the end of that calendar quarter. Neoforma reserves the right to increase the Access Fees at each anniversary date of the Effective Date based on the Consumer Price Index in effect at that time. Customer also agrees to pay any other fee or charge arising under this Agreement and not set forth in Exhibit A within thirty (60) days from the date of invoice.

4.2 Taxes. All fees payable under this Agreement are net amounts and are payable in full, without any deduction for taxes or duties of any kind. Customer shall pay all national, state, or local excise, sales, use, withholding, value-added, or other taxes or duties (except for taxes based on Neoforma's net income) arising out of this Agreement.

4.3 Payment Terms. Customer will pay all fees, costs and expenses within 30 days of the date of receipt of invoice. All payments are non-refundable. Late payments shall be subject to interest at a rate of 1.5% per month or the highest amount allowed by law, whichever is less, calculated from the date the applicable amount became due. Customer will reimburse Neoforma for the reasonable costs of collection, not including reasonable attorney fees.

5. TERM AND TERMINATION.

5.1 Term. The initial term of this Agreement will commence as of the Effective Date and shall continue for a term of five years unless terminated as provided in this Section 5.

5.2 Termination. Neoforma may immediately terminate this Agreement, upon written notice, in the event Customer breaches Sections 2.2.2 or 4 and fails to cure such breach within 5 days written notice. If either party breaches any other material obligation under this Agreement, the non-breaching party may provide written notice to the breaching party indicating: (i) the basis of such breach with reference to the applicable provisions of this Agreement; and (ii) the non-breaching party's intention to terminate this Agreement. If the breach described in the previous sentence is not cured within 30 days after written notice thereof, the non-breaching party may terminate this Agreement upon written notice to the breaching party.

5.3 Effect of Termination. Neither party will be liable for damages of any kind as a result of exercising its right to terminate this Agreement according to its terms, and termination will not affect any other right or remedy at law or in equity of either party. Upon any termination or expiration of this Agreement, the rights granted to Customer under this Agreement will automatically terminate and Customer will no longer access the Services. The provisions of Sections 1, 3, 4, 5.3, 6, 7, 8, and 9 will survive any termination or expiration of this Agreement.

5.4 Data access/termination. Upon any termination of this Agreement and Customer satisfying all payment obligations of Section 5.2, Neoforma will deliver to Customer all of Customer's Content contained on Neoforma's computers. Neoforma will deliver content to Customer for no additional charge on a mutually agreeable date not to exceed thirty (30) days past the termination date and in a mutually agreeable format.

6. INDEMNIFICATION.

6.1 Indemnification of Customer. Neoforma will defend and settle at its own expense, any action or other proceeding brought against Customer, to the extent that such action or proceeding is based on a third-party claim that the use of the Services infringes any U.S. patent, copyright or trademark right. Neoforma will pay any and all costs, damages, and expenses (including but not limited to reasonable attorneys' fees) awarded against Customer in any such action or proceeding. Notwithstanding anything in this Section 6.1, Neoforma will have no liability or obligation under this Section 6.1 with respect to any action or proceeding based on (i) any unauthorized use of the Services; (ii) use of the Services in combination with products, hardware, software, programs, services or content not approved for use by Neoforma if the claim would not have arisen but for such combination, operation or use; or (iii) use of the Services after receipt by Customer of written notice from Neoforma that it should cease use of the Services due to the existence of a claim or threat of claim as provided in Section 6.4. The foregoing clauses (i) to (iii) are collectively referred to as "Customer -Generated Claims".

6.2 Indemnification of Neoforma. Customer will defend and settle at its own expense, any action or other proceeding brought against Neoforma or its licensors, to the extent that such action or proceeding is based on a Customer-Generated Claim. Customer will pay any and all costs, damages, and expenses (including but not limited to reasonable attorneys' fees) awarded against Neoforma or its licensors in any such action or proceeding.

6.3 Conditions to Indemnification. The obligations to defend and indemnify provided under Sections 6.1 and 6.2 shall apply only if (i) the party requesting the indemnity ("Indemnified Party") promptly notifies the party obligated to provide the indemnity ("Indemnifying Party") in writing of any claim within a reasonable time; (ii) the Indemnified Party provides the Indemnifying Party with all reasonable assistance and information requested by the Indemnifying Party, at the Indemnifying Party's expense, for the defense and settlement of any claim; and (iii) the Indemnified Party provides the Indemnifying Party with the exclusive right to control and the authority to defend and settle any claim; provided that the Indemnifying Party will not enter into any settlement that adversely affects the Indemnified Party's rights or interest without the Indemnified Party's prior written approval, which shall not be unreasonably withheld or delayed.

6.4 Injunctions. If exercise by Customer of any of the rights granted to it under this Agreement is enjoined or, in Neoforma's reasonable opinion, is likely to be enjoined, Neoforma shall at its expense (i) procure for Customer a license to continue to use the Services or (ii) modify the Services to avoid the alleged infringement; or, if neither option (i) nor (ii) are reasonably available, Neoforma may terminate this Agreement, in which event Neoforma will promptly refund to Customer a pro rata portion of the Access Fees that had been paid for that year.

6.5 Sole Remedy. The remedies described in this Section 6 are Neoforma's sole and exclusive obligations, and the Customer's sole and exclusive remedies with respect to claims of infringement or misappropriation of intellectual property or proprietary rights.

7. WARRANTY DISCLAIMER. Neoforma warrants that the Service will substantially conform in all material respects to the documentation provided by Neoforma in connection with the Service (the "Documentation"). In the event that the Service fails to perform in accordance with this warranty, Customer shall promptly inform Neoforma of such fact, and, as Customer's sole and exclusive remedy Neoforma shall either: (i) repair or replace the Service to correct any defects in performance without any additional charge to Customer, or (ii) in the event that such repair or replacement cannot be done within a reasonable time, terminate the Agreement and provide Customer, as Customer's sole remedy, with a pro rata refund of the unused Fees paid to Neoforma hereunder. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS." NEOFORMA DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NEOFORMA DOES NOT WARRANT THAT THE SERVICES WILL OPERATE WITHOUT INTERRUPTION, ERROR FREE, OR THAT THE RESULTS OBTAINED USING THE SERVICES WILL BE ACCURATE. NEOFORMA MAKES NO WARRANTIES, REPRESENTATIONS OR OTHER AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING SUITABILITY FOR USE OR PERFORMANCE OF THE SERVICES, WHETHER MADE BY NEOFORMA'S EMPLOYEES OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT. THE FOREGOING DISCLAIMERS WILL APPLY EVEN IF ANY WARRANTY PROVIDED UNDER THIS AGREEMENT (IF ANY) FAILS OF ITS ESSENTIAL PURPOSE.

8. LIMITATION ON LIABILITY. EXCEPT FOR A BREACH OF SECTIONS 2.2.2, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES, OR FOR ANY ERROR OR DEFECT IN THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM A CLAIM BASED UPON CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT WILL NEOFORMA'S LIABILITY TO CUSTOMER IN ANY ACTION RELATING TO OR ARISING FROM THIS AGREEMENT EXCEED THE AMOUNTS PAID HEREUNDER TO NEOFORMA WITHIN THE ONE-YEAR PERIOD PRECEDING THE EVENT LEADING TO LIABILITY. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

9. MISCELLANEOUS.

9.1 Assignment. Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, which consent shall not be unreasonably withheld. Any attempt by Customer to assign this Agreement other than as permitted above will be null and void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of both parties, their successors and permitted assigns.

9.2 Agreement Confidentiality. Customer and Neoforma will keep confidential the terms and conditions of this Agreement, except to the extent required by law.

9.3 Notices. Any notice required or permitted to be sent under this Agreement shall be (i) in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, to the addresses indicated below or to such other address as provided in writing, and shall be deemed to have been received upon the earlier of actual receipt or 5 days after deposit in the mail; or (ii) sent by facsimile and deemed to have been received on the date of the facsimile confirmation if a copy of the notice is sent by certified mail (and postmarked on the date of facsimile transmission) in accordance with subsection (i) above. Notices shall be addressed to each party's legal department at the addresses specified above.

9.4 Force Majeure. Any delay in or failure of performance by a party of its obligations under this Agreement (except for payment obligations) will not be considered a breach of this Agreement and will be excused to the extent such delay or failure of performance is caused by any occurrence beyond the reasonable control of such party, which occurrences may include, but are not limited to, acts of God, blackouts, war, riot or labor strikes.

9.5 General Terms. The parties expressly agree that they are independent contractors and do not intend for this Agreement to be interpreted as an agency, joint venture or partnership relationship between the parties. Neither party's waiver of the breach of any provision shall constitute a waiver of the provision in that or any other instance. This Agreement will be governed by and construed in accordance with the laws of the state of California, without regard to or application of conflicts of law rules or principles. Any suit arising out of or related to this Agreement will be brought solely in the courts of San Francisco County, California, and the parties hereby expressly consent to the personal jurisdiction thereof and hereby waive all objections to venue therein. The substantially prevailing party in any dispute relating to this Agreement will be entitled to recover associated costs, not including reasonable attorney fees. This Agreement contains the entire understanding of the parties relating to its subject matter and supercedes all prior agreements and understandings, both written and oral, regarding such subject matter. This Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing, signed by both parties. If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall continue in full force and effect, and the parties shall substitute a valid provision with the same intent and economic effect. This Agreement may be executed in counterparts, each of which will be deemed an original. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party.

9.6 Non-Discrimination. No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement.

9.7 Equal Benefits. With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

9.8 Merger Clause. This Agreement, including Exhibit "A, B, C, & D" attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the County Purchasing Agent. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibit "A, B, C, & D" attached hereto, the terms, conditions, or specifications set forth herein shall prevail. This Agreement, or facsimile proposal of the Agreement, constitutes the entire Agreement between County and Contractor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly designated and authorized representatives.

Neoforma, Inc.

By: Therese Grossi

Name: Therese Grossi

Title: Vice President, Provider Sales & Services

Date: February 7, 2003

Customer

By: _____

Name: Rose Jacobs Gibson, President

Title: Board of Supervisors, County of San Mateo

Date: February 25, 2003

EXHIBIT A

SERVICES; FEES

Order No.	Description of Services	Product Name	Price	Quantity	Total Monthly Access Fee
04-1000	Master license for access to web-based supply chain management software program. -- includes 15 concurrent users	PowerSync	\$6,500	1	\$6,500
04-1001	Additional User fee for access to web-based software program.	Additional User License		0	
01-1005S	User license for Neoforma software added to third party handheld portable device.	Handheld software	Included	3	Included
04-EDI	EDI Services (850, 855) See Exhibit C -- 2 vendors from list included	PowerConnect	Included	2	Included
	SUBTOTAL		\$6,500		\$6,500
	TAX (If Applicable)				
	Earned Discount: -- Sign By 02/28/03		(\$1,625)	1	(\$1,625)
	Year 1 – Monthly Access Fee				\$4,875
	Year 2 – Monthly Access Fee				\$4,875
	Year 3 – Monthly Access Fee				\$5,168
	Year 4 – Monthly Access Fee				\$5,478
	Year 5 – Monthly Access Fee				\$5,806

In no event, shall total payment for services under this Agreement exceed \$385,000.

EXHIBIT B

TECHNICAL SUPPORT ESCALATION PROCEDURES

Type of Error	Business Impact	Support from Neoforma
Priority A	Mission Critical. The Error renders Software inoperative and materially interrupts Customer's business.	Neoforma will respond to Priority A Errors within 4 hours on regular business days; calls received after 2:00 p.m., Pacific Time will be responded to on the next business day. Support will be offered via email and over the phone. Neoforma will (i) promptly assign Neoforma engineers to correct the Error; (ii) notify Neoforma management that such Errors have been reported, and of steps being taken to correct such Error(s); (iii) periodically inform Customer on the status of the corrections; and (iv) work diligently to provide Customer with a Workaround or Fix.
Priority B	Significant Impact. The Error substantially degrades the Software performance, or materially restricts Customer's use of the Software, and is observable by Customer's customers.	Neoforma will respond to Priority B Errors within one business day. Support will be offered via email and over the phone. Neoforma will exercise commercially reasonable efforts to develop a Fix, and deliver the Fix promptly when it is available.
Priority C	Moderate Impact. The Error substantially degrades the Software performance, or materially restricts Customer's use of the Software, but is limited to back-end processes and data exchange not perceived by Customer's customers.	Neoforma will respond to Priority C Errors within one business day. Support will be offered via email and over the phone. Neoforma will exercise commercially reasonable efforts to develop a Fix, and deliver the Fix with the next Update.
Priority D	Non-mission critical. The Error causes only a minor impact on Customer's use of Software.	Neoforma may include the Fix for a Priority D Error in the next New Release.

EXHIBIT C

Electronic Data Interchange (EDI) Services

Please select five (check boxes) of the nine vendors listed below for the "standard" EDI Services Application.

- Allegiance
- Abbott Labs
- Caligor / Henry Schein
- Choice
- Kreiser
- McKessonHBOC
- Medline
- Midland Medical
- Owens & Minor

EDI Services Pricing

The two standard vendors chosen above are included in the monthly subscription fees. Any additional non-standard vendors are calculated at \$50 per maps (850/855) per facility per month. A one-time set up fee of \$1,750 is charged per map on non-standard vendors (please list any additional non-standard vendors below).

_____	_____
_____	_____

Vendor/Map Transaction Fee

For each vendor/map transaction beyond 20 per month, there will be a transaction fee of \$.50 (fifty cents). Transaction fees will be billed monthly.

EXHIBIT D

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: Neoforma, Inc.
Contact Person: Therese Grossi – Vice President, Sales
Address: 3061 Zanker Rd
San Jose, CA 95134
Phone Number: 408-468-4000
Fax Number: 408-468-4042

II Employees

Does the Contractor have any employees? X Yes No

Does the Contractor provide benefits to spouses of employees? X Yes No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- X Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
 Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
 No, the Contractor does not comply.
 The Contractor is under a collective bargaining agreement which began on _____ (date) and expires on _____ (date).

IV Declaration

Therese Grossi

Signature

Vice President, Sales

Title

Therese Grossi

Name (Please Print)

Contractor Tax Identification Number