

Information Builders

WebFOCUS™ Cloud 30-Day Limited Trial

This WebFOCUS Cloud 30 Day Limited Trial Agreement (“Agreement”), contains the terms and conditions that govern your access to and use of the WebFOCUS Cloud Software Service offering and is an agreement between Information Builders, Inc. (“IBI”) and you or the entity you represent (“Customer”). Customer represents to IBI that it is lawfully able to enter into this Agreement and if entering into this Agreement for an entity, that the person entering into this Agreement has legal authority to bind that entity.

Important Notice to Customers – Customer must carefully read all of the terms and conditions of this Agreement before accepting these terms. Customer accepts these terms by either: (i) selecting or clicking the button that acknowledges its acceptance and agreement to be governed by these terms; or (ii) otherwise proceeding with the access to, installation or activation of the Software Service. By proceeding Customer acknowledges that it is accepting the terms and conditions contained in this Agreement and any applicable third party software and licenses used in the Software Service. A list of third party licenses is available at https://www.informationbuilders.com/products/third_party_licenses.

If Customer is not willing to be bound by these terms and conditions, Customer must promptly terminate the installation/activation procedure by selecting “No” (or “Cancel”). Upon such termination, Customer must promptly delete any Software and any related materials that have been downloaded (if any); and immediately notify Information Builders that it has aborted the activation/installation. Please contact Information Builders with any questions regarding these terms and or to provide notice as described at customercare@informationbuilders.com.

- 1.1. **“Customer Content”** means Customer’s content and data uploaded, transferred to or from for processing, storage or hosting by the Software Service and any results that you or any User derive from the Software Service.
 - 1.2. **“Personal Information”** and **“Personally Identifiable Information”** means any information or set of information that identifies or could be used to identify an individual, including but not limited to: (i) Protected Health Information (“PHI”) as defined in the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”); (ii) personal information governed by applicable consumer confidentiality and privacy laws and regulations, including, without limitation, the federal Gramm Leach Bliley Act (“GLB”) and applicable state laws; (iii) Personal Data within the scope of the European Union General Data Protection Regulations (“GDPR”).
 - 1.3. **“Software Service”** means IBI’s proprietary online, standard Web-based WebFOCUS Cloud application service made generally available by IBI on a limited term subscription basis that includes, without limitation IBI’s proprietary technology and intellectual property (whether owned by IBI or licensed to IBI from a third party), including, without limitation, software, API development software, user interface designs, architecture, methodologies, IBI’s third parties’ content, sample data, documentation, network designs, know-how, and trade secrets, together with any modifications or derivatives of the foregoing.
 - 1.4. **“Term”** means 30 calendar days from the earlier of the date that these terms are accepted and or the Software Service is made available to Customer for access or use.
 - 1.5. **“User”** means an individual Customer employee or Customer contractor with a profile and credentials to log on to the Software Service who (i) have a need to use or access the Software Service in connection with Customer’s internal evaluation activities, and (ii) have executed written non-disclosure agreements obligating them to protect the confidentiality of non-public information that they may have access to as part of their engagement with Customer. Customer shall be responsible for usage of the Software Service and documentation by all Users. The maximum number of Users of the Software Service for this Agreement is 10 Users.
2. **Delivery of Software Service.**
 - 2.1. **Software Service.** IBI will provide Customer the Software Service and hereby grants Customer a revocable, non-exclusive, nontransferable, non-sublicensable, royalty-free limited Term right to access and use the Software Service in accordance with the terms of this Agreement. The Software Service shall be used on a trial basis for a non-production environment solely for Customer’s testing and evaluation purposes and for no other purpose. The Software Service and any output may be used for evaluation by up to 10 Users. Customer understands that the Software Service is provided as software-as-a-service and is not customized to Customer’s unique requirements. Customer acknowledges that throughout the Term IBI may make regular and sometimes substantial upgrades, changes and improvements to the Software Service in order to enhance the Software Service generally and/or remedy any issues with the Software Service.
 - 2.2. **Sample Data.** IBI will make available sample data for use with the Software Service during the Term. Additionally, Customer may upload or connect its own Customer Content for use in the testing and evaluation of the Software Service. Customer shall not provide any “Personal Information” or “Personally Identifiable Information” as part of the Customer Content. IBI will not access or use Customer Content except as necessary to maintain or provide the Software Service, or as necessary to comply with the law or a binding order of a governmental body. Customer is solely responsible for its’ Customer Content and the accuracy of the Customer Content. IBI may immediately (and without prior notice) block access to any Customer Content on the Software Service (i) that it believes violates the law, misappropriates or infringes the intellectual property rights of a third party, or violates the terms and conditions of this Agreement; or (ii) pursuant to the Digital Millennium Copyright Act, a subpoena, or an order issued by a court or government agency.
 - 2.3. **Support.** IBI maintains self-service, password-protected support websites, which are available 24x7. Each site contains updated customer support information. Customer shall only be entitled to on-line self-service support under this Agreement.
 - 2.4. **Observations.** In consideration of being allowed to access and use the Software Service for trial and evaluation purposes, Customer agrees that IBI may collect information relating to Customer’s access, use, testing, or evaluation of the Software Service, feedback, observations, suggestions or information regarding the performance, features and functionality of the Software Service (“Observations”). IBI will own and may use any and all Observations for IBI’s own purposes including but not limited to determining future development needs or enhancements, recommendations for improved usage of the Software Service, identification of trends, publishing anonymized reports on its findings, etc.

- 2.5. **Privacy and Security.** Customer recognizes and agrees that internet data transmission carries inherent security risks and that as a result IBI cannot guarantee that any Customer Content Customer stores or transmits through the Software Service will not be subject to malicious unauthorized access by others or that others will not gain unauthorized access to the Software Service. Customer shall identify and interpret all laws and industry standard controls that apply to the transfer, use, storage, backup, availability, integrity, security and destruction of any Customer Content. Notwithstanding any other provision in this Agreement, Customer shall make the final decision regarding whether the Software Service meets or exceeds Customer's legal obligations with respect to the transfer, use, storage, backup, availability, integrity, security and destruction of Customer Content.
3. **Intellectual Property.** Except for the rights expressly granted herein: (i) all right, title and interest in and to Customer Content will remain solely with Customer; and (ii) all right, title and interest in and to Software Service will remain solely with IBI. IBI and Customer each agree not to derive, or attempt to derive, directly or indirectly, source code or other trade secrets from the other party, except and only to the extent expressly permitted by, and in accordance with, applicable law. Customer hereby grants to IBI the right to access and use the Customer Content, solely as reasonably necessary for IBI to meet its obligations under this Agreement. If Customer provides IBI with any suggestions, enhancement requests, recommendations or other feedback regarding the Software Service, Customer grants to IBI a perpetual, irrevocable, worldwide, royalty-free, fully paid up, transferable and sub-licensable license to use and to incorporate Observations into the Software Service or other IBI products and materials.
4. **Customer's Obligations.**
- 4.1. **Customer's Representations and Warranties.** Customer represents and warrants that (i) Customer has the legal right and authority, and will continue to own or maintain the legal right and authority, during the term of this Agreement, to place and use any Customer Content as contemplated under this Agreement; and (ii) Customer's performance of Customer's obligations, and all use of the Software Service by Customer and Customer's Users, will not violate any applicable laws, regulations (including without limitation, those related to export, privacy, security, and the collection, use, transmission and retention of data within or between any jurisdiction(s)), or the prohibitions in sections 5.4 or 5.5, or cause a breach of any of Customer's agreements with any third parties.
- 4.2. **Customer Content.** Customer acknowledges that it is responsible for all Customer Content, that IBI exercises no control over any data passing through the Software Service, and that it is Customer's sole responsibility to ensure that Customer and Customer's Users either own all Customer Content or control the rights thereto and have received all necessary consents to use, process, transmit or display such Customer Content. IBI provides only storage and delivery services for Customer Content, and is not the publisher of Content. Customer shall act as the data controller for all Customer Content. IBI shall act as the data processor on behalf of Customer with respect to such Customer Content and shall carry out the instructions of Customer with regard to the collection, processing and protection of such Customer Content in accordance with this Agreement. For the avoidance of doubt, Customer has the right and ability to retrieve Customer's Content at any time during the Term pursuant to Section 7.2.3.
- 4.3. **Acceptable Use.** Customer acknowledges and agrees that the Software Service is provided contingent upon Customer abiding by the Acceptable Use Policy ("AUP") posted at <https://aws.amazon.com/aup> as it may be amended from time to time and as it may be made available on any successor or related site designated by IBI. The AUP is incorporated herein and forms a part of this Agreement. IBI shall have the right to immediately terminate this Agreement for material breach in the event Customer breaches the AUP. IBI may immediately without prior notice or liability suspend any Software Service use that is in violation of any law, regulation or ordinance. Customer Content stored in the Software Service may not be available during a suspension.
- 4.4. **Prohibited Activities.** Customer represents and warrants that it shall not, and shall ensure that its Users do not, use the Software Service to perform activities that (i) are unlawful including without limitation any violation of all then-current export and import laws and regulations of the United States and such other governments as are applicable to any Software Service that Customer may receive from IBI, (ii) provide Customer Content that is illegal, defamatory, malicious, harmful, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation, age or status; (iii) result in the storage or publication of threatening, infringing or offensive material, or constitute Spam/E-mail/Usenet abuse, a security risk or a violation of any individual's privacy; (iv) are harmful to or interfere with any third-party use of the Software Service, the network, software, systems and/or facilities ("Infrastructure") of IBI or the Infrastructure of any other provider; (v) constitute collection, use, processing or transmission of Personal Information; (vi) are intended to circumvent or disable any of the security-related, management or administrative features and measures of IBI or any third party; (vii) remove modify or obscure any copyright, trademark or other proprietary rights notices that appear; (viii) copy any feature, design or graphic in the Software Service or reverse engineer the Software Service; or (ix) use the Software Service for competitive purposes. If Customer becomes aware of any breach of the foregoing, Customer will promptly notify IBI and immediately remedy the situation, including, if necessary, limiting, suspending or terminating any relevant User's access to the Software Service. In the event of a breach or suspected breach of the any of the foregoing prohibitions, IBI reserves the right to suspend Customer's Software Service, if reasonably necessary to prevent harm to IBI, Customer, other customers, and/or IBI's partners, vendors and suppliers without notice.
- 4.5. **Restricted Use.** Neither Customer nor any User will use the Software Service in any manner or for any purpose other than as expressly permitted by this Agreement. Customer expressly acknowledges that Customer may not sell, rent or lease the Software Services provided hereunder to others, in any way, including without limitation, using the Software Service for the purpose of operating a service bureau or application service provider, or other revenue generating activities.
- 4.6. **Duty to Defend.** Customer shall defend or settle, at Customer's expense, any Claim brought against IBI that (i) any Customer Content, as provided by Customer to IBI under this Agreement, infringes any copyright, trade secret, patent or other proprietary right, (ii) is a result of personal injury or death caused by Customer's gross negligence or willful misconduct, or (iii) is a result of any violation of or failure to comply with section 4; and Customer shall pay all final judgment awards against IBI or settlement costs in connection with such Claim.
5. **IBI Disclaimers and Limitations of Liability.**
- 5.1. THE SOFTWARE SERVICE IS PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS. EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER, IBI AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. CUSTOMER'S USE OF THE SOFTWARE SERVICE IS AT CUSTOMER'S OWN RISK AND CUSTOMER IS SOLELY RESPONSIBLE FOR THE SUITABILITY OF THE SOFTWARE SERVICE CHOSEN AND FOR DETERMINING WHETHER IT MEETS CUSTOMER'S CAPACITY, PERFORMANCE, SECURITY AND SCALABILITY NEEDS.
- 5.2. IBI DOES NOT WARRANT THAT THE SOFTWARE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, COMPLETELY SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED. CUSTOMER ACKNOWLEDGES THAT IBI DOES NOT CONTROL OR MONITOR THE TRANSFER OF DATA OVER THE INTERNET,

AND THAT INTERNET ACCESSIBILITY CARRIES WITH IT THE RISK THAT CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION AND PROPERTY MAY BE LOST OR COMPROMISED.

- 5.3. CUSTOMER'S USE OF ANY SOFTWARE SERVICE PROVIDED BY IBI THAT IS INTENDED TO COMPLY WITH CERTAIN LAWS, STANDARDS OR REGULATIONS WILL NOT GUARANTEE THAT CUSTOMER IS IN COMPLIANCE WITH THOSE LAWS, STANDARDS OR REGULATIONS. CUSTOMER IS ULTIMATELY RESPONSIBLE FOR UNDERSTANDING AND ENSURING THAT IT'S BUSINESS OPERATIONS AND IT'S USE OF THE SOFTWARE SERVICE COMPLIES WITH ALL APPLICABLE LAWS, REGULATORY STANDARDS AND REQUIREMENTS.
- 5.4. IBI WILL NOT BE LIABLE TO CUSTOMER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, REVENUES, CUSTOMERS, OPPORTUNITIES, GOODWILL, USE, OR DATA) WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF A IBI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOR WILL IBI BE RESPONSIBLE TO CUSTOMER FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (i) CUSTOMER'S INABILITY TO USE THE SOFTWARE SERVICE, INCLUDING AS A RESULT OF ANY (a) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR TERMINATION OR SUSPENSION OF CUSTOMER'S USE OF OR ACCESS TO THE SOFTWARE SERVICE; (b) IBI'S DISCONTINUATION OF THE SOFTWARE SERVICE; OR, (c), ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF THE SOFTWARE SERVICE FOR ANY REASON; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (iii) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT; OR (iv) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY CUSTOMER CONTENT OR OTHER DATA. IBI'S AND ITS AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED \$1,000.00 USD. THE FOREGOING STATES IBI'S ENTIRE OBLIGATION AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS PURSUANT TO THIS AGREEMENT.
6. **Confidentiality.** Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party ("Confidential Information"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to, the non-public portions of the Software Service, the terms and conditions of this Agreement, and all Content. A party receiving any Confidential Information ("Recipient") from the other ("Discloser") will use at least the same care to prevent disclosure and unauthorized use of such information as Recipient uses with respect to its own confidential and proprietary information of like importance under similar circumstances, which will not be less than reasonable care. Recipient will not disclose Confidential Information to any third parties, provided that Recipient may disclose the Confidential Information to its employees and contractors who need to know such information and who are bound in writing by restrictions regarding disclosure and use of such Confidential Information comparable to those set forth herein. Recipient will not use any Confidential Information for any purpose other than to exercise its rights and perform its obligations under this Agreement. The foregoing restrictions on disclosure and use will not apply with respect to any Confidential Information to the extent such Confidential Information: (i) was or becomes publicly known through no wrongful act or omission of Recipient; (ii) was rightfully known by Recipient before receipt from Discloser; (iii) is independently developed by Recipient (i.e., without the use of or reference to the Confidential Information of the Discloser); or (iv) becomes rightfully known to Recipient without confidential or proprietary restriction from a source other than Discloser that does not owe a duty of confidentiality to Discloser with respect to such Confidential Information. Recipient may disclose Confidential Information to the extent Recipient is legally compelled to disclose such Confidential Information, provided, however, that prior to any such compelled disclosure, Recipient will give Discloser reasonable advance notice of any such disclosure and will cooperate with Discloser in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. IBI may refer to Customer by name in IBI's mandatory filings with regulatory bodies, and in associated communications with IBI's investors.
7. **Termination.**
 - 7.1. **No Liability for Termination.** Neither party will be liable to the other for any termination or expiration of any Software Service or this Agreement in accordance with its terms.
 - 7.2. **Termination.**
 - 7.2.1. The Software Service shall automatically terminate upon the expiration of the Term.
 - 7.2.2. Either party may terminate this Agreement for convenience or material breach at any time during the Term.
 - 7.2.3. It shall be Customer's sole responsibility to download or retrieve any Customer Content that Customer wishes to retain prior to the expiration and or termination of the Agreement.
 - 7.3. **Effect of Termination.** Upon the effective date of termination of this Agreement:
 - 7.3.1. IBI will immediately cease providing the Software Service.
 - 7.3.2. IBI will delete any Customer Content stored or retained in the Software Service promptly upon expiration or termination. If requested by Customer, IBI will confirm such deletion within 5 business days of Customer's request;
 - 7.4. **Survival.** The obligations of the parties under this Agreement, which by their nature would continue beyond termination, cancellation, or expiration of this Agreement, shall survive termination, cancellation, or expiration of this Agreement.
8. **Miscellaneous Provisions.**
 - 8.1. **Governing Law and Forum.** This Agreement shall be governed by and interpreted under the laws of the State of New York without application of its conflict of laws principles. The parties agree that the making and performance of this Agreement constitutes the transaction of business in New York sufficient to give the federal and state court therein jurisdiction over both parties. Any action or proceeding involving, arising out of, or relating to this Agreement, or the making or breach thereof, shall be brought in a federal or state court located in the County, City, and State of New York, and in no other forum, and the jurisdiction of such courts over such matters shall be exclusive. To the extent not expressly prohibited by any applicable law, the United Nations Convention on Contracts for the International Sale of Goods and all international and domestic legislative or other implementations of such Convention will not apply to this Agreement.
 - 8.2. **Notices.** Any notice hereunder will be in writing and delivered in person or by courier, sent by confirmed email, or mailed by certified or registered mail, postage prepaid, return receipt requested, and addressed as provided in the Customer registration or to such other address as given in accordance with this Section. If notice is given in person, by courier or by email, it will be effective upon receipt; and if notice is given by mail, it will be effective five (5) business days after deposit in the mail. Any notice to IBI shall be copied at the same time in writing to:

- 8.3. **Government Rights.** If Customer is an agency or instrumentality of the United States Government, the software underlying the Software Service is deemed to be "commercial computer software" as defined in the FAR and DFARS. The Government will receive no greater than restricted rights as provided in FAR 52.227-14, FAR 52.227-19(c)(1)-(2) (Jun. 1987), DFAR 252.227-7013(c)(1)(ii) (Oct. 1988), DFAR 252.221-7015(c) (May 1991), DFAR 252.227-7014, or DFAR 252.227-7018, as applicable or amended. In addition, the Government will receive no greater than limited rights as provided in FAR 52.227-14, DFAR 252.227-7015, DFAR 252.227-7018, or DFAR 252.227-7013, as applicable or amended. All computer software and technical data were developed exclusively at private expense by IBI or its third-party licensors or suppliers. The use of the Software Service is further restricted in accordance with the terms of this Agreement.
- 8.4. **Entire Agreement.** This Agreement and all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter. Customer acknowledges that in entering in this Agreement it is not doing so in reliance upon, or contingent upon, the delivery, or promise of delivery, of any future functionality, features, products or services. The terms set forth in this Agreement will control in the event that there are any different or additional terms set forth on any purchase order, registration form or other form that Customer submits. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of IBI.