

Attachment D

**Existing Master Services
Agreement (MSA) between
County and Accela, Inc. signed
08/14/2018 and as amended
07/12/2022**

ACCELA MASTER SUBSCRIPTION AGREEMENT

This Accela Master Subscription Agreement (this “**Agreement**”) is entered into as of the date of last signature (the “**Effective Date**”) by and between Accela, Inc. and Customer identified on the Order (“**Customer**”), together referred to as the “**Parties**” and each individually as a “**Party.**” Specific services terms, product details, and any applicable license and/or subscription terms will be set forth in applicable Order(s) and Statements of Works (“**SOW**”), which shall become binding on the parties and subject to this Agreement.

Purchase or use of the Subscription Service (defined below) is subject to this Agreement. If Customer is entering into this Agreement on behalf of a company, organization or another legal entity (an “**Entity**”), Customer is agreeing to this Agreement for that Entity and representing to Accela that it has the authority to bind such Entity to this Agreement.

1. DEFINITIONS

1.1 “**Authorized User**” means one individual natural person, authorized by Customer to use the Subscription Service and for whom Customer has purchased a subscription to the Subscription Service. Authorized Users may include but are not limited to Customer’s employees, contractors and agents. Each Authorized User will be associated with a single, unique email address for purposes of accessing (and being identified within) the Subscription Service.

1.2 “**Customer Data**” means any and all content, eDocuments, materials, data and information that Customer or its Authorized Users enter into the Subscription Services including but not limited to, personal information, information exchanged between Customer and Authorized User or Authorized User and a third party using the Subscription Services, information used to identify account names or numbers, routing information, usernames, passwords, access codes and prompts.

1.3 “**Customer**” means the entity that purchases a subscription to the Subscription Service, directly from Accela or through an authorized reseller, distributor, or other channel partner of Accela.

1.4 “**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.5 “**Optional Subscription Services**” mean the optional add-ons to the Subscription Service that may be available for purchase either directly from Accela or through an authorized reseller or partner of Accela, as more particularly described or identified in the applicable Order.

1.6 “**Order**” means written orders to purchase subscriptions and to use the Subscription Service (or, where applicable, to purchase Optional Subscription Services).

1.8 “**Subscription Service(s)**” means the cloud-based network security service(s) for which Customer has obtained a subscription either directly from Accela or through an authorized reseller or other partner of Accela, as more particularly described in the applicable agreement or order under which such subscription was obtained. Unless otherwise specified herein or other applicable contractual terms, all references to “**Subscription Service(s)**” will be deemed to include any and all Optional Subscription Services.

1.9 “**Software**” means any software (including client software for Authorized Users’ devices) that Accela makes available for download or otherwise provides for use with the Subscription Service.

1.10 **“Specifications”** means the online specifications for the Subscription Service, as made available by Accela at <https://accela.box.com/SoftwareSpecs> (which URL location and content may be updated from time to time by Accela).

1.11 **“Subscription Period(s)”** means the duration of Customers and Authorized User’s active, paid access to the Subscription Service, as designated in the Order(s).

1.12 **“Supported Modification”** means a configuration of or modification to the Subscription Service requested by Customer that can be consistently supported by Accela, does not require direct database changes and is capable of being tested and maintained by Accela.

2. USAGE AND ACCESS RIGHTS

2.1. **Right to Access.** Accela hereby grants to Customer a limited, non-exclusive, non-transferrable right to (a) access and use the Services and (b) implement, configure and permit its Authorized Users to access and use the Services during the Subscription Period, solely for it and its affiliates’ internal business purposes, and in accordance with the Specifications. Customer may purchase the Services by submitting Orders. No Order will be deemed accepted by Accela unless and until Accela accepts such Order in writing. Upon Order acceptance and subject to Customer’s payment of the corresponding Services fees, Accela will make the Services available to Customer. Any terms and conditions contained in any quote, invoice, purchase order or Order that are inconsistent with the terms and conditions of this Agreement will be deemed stricken, unless expressly agreed to in writing by Accela with explicit reference to the accepted terms and conditions. Upon acceptance of an Order, it will become part of this Agreement.

2.2. **Restrictions on Use.** Customer shall not, and shall not permit others to, do the following with respect to the Subscription Services:

- 2.2.1. make the Subscription Service available to anyone other than Authorized Users;
- 2.2.2. use the Subscription Services, or allow access to it, in a manner that circumvents contractual usage restrictions or that exceeds Customer’s authorized use or usage metrics as set forth in this Agreement, including the applicable Order;
- 2.2.3. license, sub-license, sell re-sell, rent, lease, transfer, distribute or time share or otherwise make any portion of the Subscription Services available for access by third parties except as otherwise expressly provided in this Agreement or the express permission of Accela;
- 2.2.4. use the Subscription Service in a way that (i) violates or infringes upon the rights of a third party, including those pertaining to: contract, intellectual property, privacy, or publicity; or (ii) effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene;
- 2.2.5. access or use the Subscription Services for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Subscription Services or allow access by a direct competitor of Subscription Services;
- 2.2.6. obtain intellectual property rights to the use of any component of the Subscription Services (inclusive of APIs);
- 2.2.7. Create derivative works based on the Subscription Service;
- 2.2.8. reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the Subscription Services or technologies, other than copying or framing on Customer’s own intranets or otherwise for Customer’s internal business purposes in accordance with Accela’s applicable documentation;
- 2.2.9. interfere with or disrupt the integrity, operation, or performance of the Subscription Services or interfere with the use or enjoyment of it by others by, among other things, using it to create, use, send,

store, or run viruses or other harmful computer code, files, scripts, agents, or other programs or circumvent or disclose the user authentication or security of the Subscription Services or any host, network, or account related thereto or use any aspect of the Subscription Service components other than those specifically identified in an Order, even if technically possible. Accela assumes no responsibility for any fraudulent or unauthorized use of the Software or any portion of the Subscription Services.

2.3 Unauthorized Use. Customer shall notify Accela immediately of any unauthorized use of any password or account for any other known or suspected breach of security or misuse of Services. Customer is responsible for use of the Services by any and all employees, contractors, or other users that it allows to access the Services.

2.4 Data Usage and Storage. The Subscription Service is provided with a limit of two point five tera bites (2.5TB) of data storage for all cloud environments. Additional storage can be purchased from Accela by Customer in blocks of five hundred mega bites (500MB), with a price of one thousand dollars (\$1,000) per year. If the Subscription Service is nearing its expiration date or is otherwise terminated, Accela will initiate its data retention processes, including the deletion of Customer Data from systems directly controlled by Accela. Accela's Data Storage Policy can be accessed <https://accela.box.com/v/DataStoragePolicy> (which URL location and content may be updated from time to time by Accela).

2.5 Accela's Responsibilities. Accela will: (i) make the Subscription Services available to Customer pursuant to this Agreement and any applicable Orders; (ii) provide to Customer support related to the Subscription Service in accordance with the Accela Support Terms accessible at <https://accela.box.com/SaaSsupportPolicy> (which URL location and content may be updated from time to time by Accela); and (iii) provide the Subscription Service only in accordance with applicable laws and government regulations.

2.6 Customer's Responsibilities. Customer will (i) be responsible for meeting Accela's applicable minimum system requirements for use of the Subscription Service; (ii) be responsible for Authorized Users' compliance with this Agreement and for any other activity (whether or not authorized by Customer) occurring under Customer's account, (iii) be solely responsible for the accuracy, quality, integrity and legality of Customer Data, (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Service under its account, and notify Accela promptly of any such unauthorized access or use, and (v) use the Subscription Service only in accordance with the applicable documentation, laws and government regulations, and any written instructions provided by Accela to Customer.

3. AUTHORIZED USERS. Only Authorized Users may access or use the Subscription Service under Customer's account. Each Authorized User may use any reasonable number of compatible devices for purposes of accessing the Subscription Service; provided that, Accela reserves the right to determine whether a number of devices is reasonable and, in its sole discretion, to place a corresponding cap on the number of devices. Unless expressly authorized by Accela, Authorized User subscriptions cannot be shared or used by more than one individual but may be permanently reassigned to new Authorized Users. The number of Authorized User subscriptions purchased may be increased (under a new Order) but cannot be decreased during any Subscription Period.

3.1. Authorized Users may need to download and install client Software (as made available by Accela or other third party authorized by Accela) on each device through which they intend to use the Subscription Service. All use of such Software will be governed by terms of the applicable license agreement or terms of use that accompanies or is made available in connection with the Software. Customer acknowledges that each Authorized User (or authorized Customer representative) must accept such license agreement, and have Subscription Service-compatible device(s), to download, install, and/or use the Software. Nothing in this Agreement will be deemed to grant to Customer rights of any kind in the Software.

4. PAYMENT TERMS.

4.1. Invoicing and Payment. Accela will invoice Customer in advance for the Subscription Service. Subscription Service fees are due upon invoice and payable within thirty (30) days of the invoice date. Subscription Service fees will be due no later than the first day of each Subscription Period to which the payment relates. If Customer orders additional Authorized User quantities part-way through an existing Subscription Period, and the initial Subscription Period for the additional quantity is adjusted as described herein, then the Subscription Service fee for such additional quantity will be pro-rated accordingly. Optional Subscription Services will be due at the same time as payment for the corresponding Subscription Service, or (if applicable) as otherwise specified in the applicable Order or governing terms. Subscription Service fees will be subject to an automatic annual increase by not more than five percent (5%) of the prior year's Subscription Service fees ("Uplift"). Customer is responsible for keeping Accela accurately and fully informed of Customer's billing and contact information, including providing any purchase order numbers in advance of invoice issuance. Upon execution by Customer and Accela, each Order and/or SOW is non-cancellable and non-refundable except as provided in this Agreement.

4.2. Overdue Charges. If any fees owed are not received from Customer by the due date, then without limiting Accela's rights or remedies, those charges will accrue late interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

4.3. No Requirement for Purchase Order. Customer acknowledges that a purchase order is not required and is for administrative convenience only, and that Accela has the right to issue an invoice and collect payment without a corresponding purchase order. Provided, however, that if a Customer's procurement procedure requires a purchase order number on a pertinent Order or SOW, the purchase order is required be provided to Accela. If the Customer issues a purchase order, then it shall be for the full amount set forth in the applicable Order or SOW, and Accela hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by Customer.

4.4. Suspension of Service and Acceleration. If any amount owing by Customer under this Agreement for any of the Subscription Services is thirty (30) or more days overdue, Accela may, without limiting Accela's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement (including any Order or SOW) so that all such obligations become immediately due and payable and suspend any use of the Subscription Service until such amounts are paid in full. Moreover, if any amount owing by Customer under this Agreement for any Subscription Services is ninety (90) days delinquent, Accela may, in its sole discretion, temporarily cease providing Customer Subscription Services and/or any pertinent support until past due amounts are paid in full.

4.5. Taxes. Subscription Service fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes. If Accela has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides Accela with a valid tax exemption certificate authorized by the appropriate taxing authority prior to invoice issuance. For clarity, Accela is solely responsible for taxes assessable against it based on Accela's income, property and employees.

5. CONFIDENTIALITY

5.1. Definition. 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. However, Confidential Information will 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.

5.2. Protection. Except as otherwise permitted in writing by the Disclosing Party and subject to the other terms of this Agreement (including Accela's Privacy Policy, accessible at <https://accela.box.com/v/AccelaPrivacyPolicy>, which URL and its content may be updated from time to time by Accela), (i) the Receiving Party will 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) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are legally bound to protect such Confidential Information consistent with this Agreement.

5.3. 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, limit, or protect the disclosure.

6. OWNERSHIP

6.1. Subscription Services. Subject to the limited rights expressly granted hereunder, Accela reserves all rights, title and interest in and to the Subscription Service, derivative works thereof, and any associated Software and documentation, including all related Intellectual Property Rights.

6.2. Customer Data. Customer reserves all its rights, title and interest in and to the Customer Data. No rights are granted to Accela hereunder with respect to the Customer Data, except that Accela may (i) store, copy, process, and transmit such Customer Data for purposes of providing the Subscription Service to Customer and (ii) otherwise utilize Customer Data if and as permitted by the Accela Privacy Policy.

6.3. Third Party Services. Customer may choose to obtain products or services that are provided or supported by third parties ("Third Party Services") for use with the Subscription Services. Third-Party Services are provided pursuant to the terms of the applicable third-party license or separate agreement between the licensor of the Third-Party Services and Customer, and Accela assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any Third-Party Service.

6.4. Feedback. Customer grants Accela a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Subscription Service (or Accela's other software or services) any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or Authorized Users relating to the operation or features of the Subscription Service.

7. WARRANTIES AND DISCLAIMERS

7.1. Specifications. Subject to the limitations set forth below, Accela warrants that, during the Subscription Period, the Subscription Service will operate in all material respects in accordance with the Specifications. As Customer's sole and exclusive remedy and Accela's entire liability for any breach of the foregoing warranty,

Accela will use commercially reasonable efforts to modify the Subscription Service so that it conforms to foregoing warranty.

7.2. Subscription Service Level Commitment. During the Subscription Period, Accela further warrants that the Subscription Service will meet the performance level specified in Exhibit A below. The Subscription Service Level Commitment sets forth Customer's sole and exclusive remedy for Accela's failure to achieve the stated Subscription Service performance level.

7.3. Mutual Warranties. Each party represents and warrants that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of the Agreement; and (b) no authorization or approval from any third party is required in connection with its execution, delivery, or performance of this Agreement.

7.4. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ACCELA DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND ACCELA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Accela will not be responsible to the extent failure of the Subscription Service to operate as warranted is caused by or results from: (i) any modification to the Subscription Service other than a Supported Modification; (ii) combination, operation or use of the Subscription Service with Customer's or a third party's applications, software or systems; (iii) abuse, willful misconduct or negligence by anyone other than Accela or Accela's designee; (iv) use of the Subscription Service other than in accordance with the terms of this Agreement and/or the applicable Specifications and Accela documentation or (v) any of the SLC Exclusions (as defined in the Subscription Service Level Commitment).

7.5. Marijuana-Related Business. Accela is considered a software service provider to its customers and not a marijuana-related business or agent thereof. In addition to the foregoing, Accela only retains Subscription Service fees in accordance with Section 4 (Payment Terms) of this Agreement from its Customer, a state or local government agency, and does not retain these fees from any type of end user, including applicants.

- 7.5.1. It is the sole responsibility of the Customer or end user to offer state law compliant services, which may be coordinated and facilitated through the use of the Subscription Service.
- 7.5.2. Accela makes no representations, promises, or warranties with respect to the legality, suitability, or otherwise regarding any third-party provider, including partners, and have no responsibility or liability with respect to services provided to Customer by such third parties.
- 7.5.3. Customer expressly acknowledges and assumes full responsibility for cooperating with the laws of the state or country of its residency.

8. MUTUAL INDEMNIFICATION

8.1. Indemnification by Customer. Customer will defend (or settle), indemnify and hold harmless Accela, its officers, directors, employees and subcontractors, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim that: (i) a third party has suffered injury, damage or loss resulting from Customer's or any Authorized User's use of the Subscription Service (other than any claim for which Accela is responsible under Section 8.2); or (ii) Customer or any Authorized User has used the Subscription Service in a manner that violates this Agreement or applicable law.

8.2. Indemnification by Accela. Accela will defend (or at Accela's option, settle) any third-party claim, suit or action brought against Customer to the extent that it is based upon a claim that the Subscription Service, as

furnished by Accela hereunder, infringes or misappropriates the Intellectual Property Rights of any third-party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. Accela will have no liability under this Section 8.2 to the extent that any third-party claims described herein are based on (i) any combination of the Subscription Service with products, services, methods, or other elements not furnished by Accela; (ii) any use of the Subscription Service in a manner that violates this Agreement or the instructions given to Customer by Accela; (iii) Customer's failure to incorporate updates or upgrades that would have avoided the alleged infringement; (iv) Customer's breach of this Agreement; and/or Customer's revisions of Subscription Services made without Accela's written consent. THIS SECTION 8.2 STATES THE ENTIRE OBLIGATION OF ACCELA AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE.

8.3. Indemnification Requirements. In connection with any claim for indemnification under this Section 8, the indemnified party must: (a) provide the indemnifying party prompt written notice of such claim; (b) reasonably cooperate with the indemnifying party, at indemnified party's expense, in defense and settlement of such claim; and (c) give sole authority to the indemnifying party to defend or settle such claim.

8.4. Mitigation Measures. In the event that (i) any claim or potential claim covered by Section 8.2 arises or (ii) Accela's right to provide the Subscription Service is enjoined or in Accela's reasonable opinion is likely to be enjoined, Accela may, in its discretion, seek to mitigate the impact of such claim or injunction by obtaining the right to continue providing the Subscription Service, by replacing or modifying the Subscription Service to make it non-infringing, and/or by suspending or terminating Customer's use of the Subscription Service with reasonable notice to Customer. In the case of a suspension or termination pursuant to this Section 8.4, Accela will refund to Customer a portion of fees prepaid by Customer for the then-current Subscription period, prorated to the portion of that Subscription period that is affected by the suspension or termination).

9. LIMITATIONS OF LIABILITY. EXCEPT FOR LIABILITY ARISING OUT OF (i) CUSTOMER'S BREACH OF SECTION 2.2 (RESTRICTIONS); (ii) EITHER PARTY'S BREACH OF SECTION 5 (CONFIDENTIALITY); OR (III) EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT.

Exclusion of Damages. EXCEPT FOR LIABILITY ARISING OUT OF (i) CUSTOMER'S BREACH OF SECTION 2.2 (RESTRICTIONS) OR (ii) EITHER PARTY'S BREACH OF SECTION 5 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY OR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SUBSCRIPTION SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTHING IN THIS AGREEMENT EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE.

9.1. Security and Other Risks. Customer acknowledges that, notwithstanding security features of the Subscription Service, no product, hardware, software or service can provide a completely secure mechanism of electronic transmission or communication and that there are persons and entities, including enterprises, governments and quasi-governmental actors, as well as technologies, that may attempt to breach any

electronic security measure. Subject only to its limited warranty obligations set forth in Section 7, Accela will have no liability for any security breach caused by any such persons, entities, or technologies. Customer further acknowledges that the Subscription Service is not guaranteed to operate without interruptions, failures, or errors. If Customer or Authorized Users use the Subscription Service in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, Customer assumes any associated risks and will indemnify Accela and hold it harmless against those risks.

10. SECURITY AND PERSONAL DATA

10.1. Security. Accela will use commercially reasonable security technologies (including if applicable, encryption, password protection and changes, and firewall protection) in providing the Subscription Service. Accela has implemented information security policies and safeguards to preserve the security, integrity, and confidentiality of Customer Data and personal data and to protect against unauthorized access and anticipated threats or hazards to Customer.

10.2. Customer Data. Customer shall be responsible for Customer Data as entered in to, applied or used in the Subscription Services. Customer is responsible for updating all Customer Data. In addition, Customer acknowledges that Accela generally does not have access to and cannot retrieve lost Customer Data. If Customer loses Customer Data, Customer may no longer have access to the Subscription Service. Customer grants to Accela the non-exclusive right to process Customer Data (including personal data) for the sole purpose of an only to the extend necessary for Accela: (i) to provide the Subscription Services; (ii) to verify Customer's compliance with the restrictions set forth in Section 2.2 (Restrictions) if Accela has a reasonable belief of Customer's non-compliance; and (iii) as otherwise set forth in this Agreement. Accela may utilize the information concerning Customer's use of the Subscription Services (excluding any use of Customer's personal data or Customer's Confidential Information) to improve Subscription Services, to provide Customer with reports on its use of the Subscription Services, and to compile aggregate statistics and usage patterns by customers using the Subscription Services.

10.3. Use of Aggregate Data. Customer agrees that Accela may collect, use, and disclose quantitative data derived from the use of the Subscription Services for industry analysis, benchmarking, analytics, marketing, and other business purposes. All data collected, used, and disclosed will be in aggregate form only and will not identify Customer, its Authorized Users, or any third parties utilizing the Subscription Services.

11. SUBSCRIPTION PERIOD AND TERMINATION

11.1. Term of Authorized User Subscriptions. Authorized User Subscriptions purchased by Customer commence on the start date specified in the applicable Order and, unless terminated earlier in accordance with this Agreement, continue for the term specified therein (the "**Subscription Period**"). A Subscription Period and/or pricing thereon may be subject to prorating where Accela deems it appropriate to cause newly purchased Subscriptions to expire or renew simultaneously with Customer's pre-existing Subscription(s). Except as otherwise specified in the applicable Order, all Subscriptions will automatically renew for additional Subscription Periods equal to the expiring Subscription Period or one year (whichever is shorter), unless either party gives the other at least sixty (60) days' notice of non-renewal before the end of the relevant Subscription Period. The per-unit pricing during any such renewal Subscription Period may be subject to annual pricing increase as designated by Accela and notified to Customer. Pricing increases will be effective upon renewal of the Subscription Period and annually thereafter, unless otherwise agreed to by the parties. If either party provides notice of non-renewal as set forth above, Customer's right to use the Subscription Service will terminate at the end of the relevant Subscription Period.

11.2. Termination or Suspension for Cause. A party may terminate any Subscription Service for cause upon thirty (30) days' written notice to the other party of a material breach if such breach remains uncured at the

expiration of such thirty (30) day period. In addition, Accela may, at its sole option, suspend or terminate Customer's or any Authorized User's access to the Subscription Service, or any portion thereof, immediately if Accela, in its sole discretion: (i) if suspects that any person other than Customer or an Authorized User is using or attempting to use Customer Data (ii) suspects that Customer or an Authorized User is using the Subscription Service in a way that violates this Agreement and could expose Accela or any other entity to harm or legal liability, or (iii) is or reasonably believes it is required to do so by law or court order.

11.3. Effect of Termination. If this Agreement expires or is terminated for any reason: (i) Within thirty (30) calendar days following the end of Customer's final Subscription Period, Customer may request in writing Accela to provide a copy of Customer's data and associated documents in a database dump file format. Accela will comply in a timely manner with such request; provided that, Customer (a) pays all costs of and associated with such copying, as calculated at Accela's then-current time-and-materials rates; (b) pays any and all unpaid amounts due to Accela; (ii) licenses and use rights granted to Customer with respect to Subscription Services and intellectual property will immediately terminate; and (iii) Accela's obligation to provide any further services to Customer under this Agreement will immediately terminate, except any such services that are expressly to be provided following the expiration or termination of this Agreement; and the sections set forth in Section 11.4 of this Agreement.

11.4. Survival. Sections 5 (Confidentiality), 6 (Ownership and Proprietary Rights), 7.4 (Disclaimer), 8 (Mutual Indemnification), 9 (Limitation of Liability), 11.3 (Effect of Termination), 11.4 (Surviving Provisions), and 12 (General Provisions) will survive any termination or expiration of this Agreement.

12. GENERAL

12.1. Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) sending by confirmed email if sent during the recipient's normal business hours (or, if not, then on the next business day). Notices will be sent to the address specified by the recipient in writing when entering into this Agreement or establishing Customer's account for the Subscription Service (or such other address as the recipient may thereafter specify by notice given in accordance with this Section 12.1).

12.2. Governing Law and Jurisdiction. This Agreement and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions. The exclusive jurisdiction and venue of any action related to the Subscription Service or this Agreement will be the state and federal courts located in the Southern District of California and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

12.3. Compliance with Laws. Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement including, but not limited to, export laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, Customer will not permit Authorized Users to access or use the Subscription Service in violation of any U.S. export embargo, prohibition or restriction.

12.4. Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or similar relationship between the parties.

12.5. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

12.6. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will 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 will remain in effect.

12.7. Assignment. Customer may not assign or transfer this Agreement, whether by operation of law or otherwise, without the prior written consent of Accela. Any attempted assignment or transfer, without such consent, will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.8. Publicity. Subject to the provisions of Section 5, each party will have the right to publicly announce the existence of the business relationship between parties. In addition, during the Subscription Period of Customer's Subscription Service use and with notice to Customer at least ten (10) days in advance of use, Accela may use Customer's name, trademarks, and logos (collectively, "Customer's Marks") on Accela's website and marketing materials to identify Customer as Accela's customer, and for providing the Subscription Service to Customer; provided that, Accela will use commercially reasonable efforts to adhere to any usage guidelines furnished by Customer with respect to Customer's Marks.

12.9. Force Majeure. Accela will not be liable for any delay or failure to perform under this Agreement to the extent such delay or failure results from circumstances or causes beyond the reasonable control of Accela.

12.10. Entire Agreement. This Agreement, including any attachments hereto as mutually agreed upon by the Parties, constitute the entire agreement between the Parties concerning its subject matter and supersedes all prior communications, agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by a duly authorized representative of each party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in Customer's order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null.

IN WITNESS WHEREOF, the parties hereto have executed this MSA as of the dates listed below.

ACCELA

By: Jonathon Knight
(Signature)

DocuSigned by:
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Jonathon Knight

(Print Name)

Its: Chief Customer Officer

(Title)

Dated: 8/6/2018

(Month, Day, Year)

CUSTOMER

By: Das Williams
(Signature)

Das Williams

(Print Name)

Its: Chair, Board of Supervisors

(Title)

Dated: 8/14/18

(Month, Day, Year)

EXHIBIT A
AVAILABILITY AND SECURITY

Service Availability:

Accela will use commercially reasonable efforts to (a) provide bandwidth sufficient for Customer's use of the Subscription Services provided hereunder and in an applicable Order Form and (b) operate and manage the Subscription Services with a ninety-nine and one-half percent (99.5%) uptime goal (the "Availability SLA"), excluding situations identified as "Excluded" below.

"Excluded" means any outage that results from any of the following:

a. Any maintenance performed by Accela during Accela's standard maintenance windows. Accela will notify Customer within forty-eight (48) hours of any standard maintenance and within twenty-four (24) hours for other non-standard emergency maintenance (collectively referred to herein as "Scheduled Maintenance").

b. Customer's information content or application programming, or the acts or omissions of Customer or its agents, including, without limitation, the following:

1. Customer's use of any programs not supplied by Accela;
2. Customer's failure to provide Accela with reasonable advance prior notice of any pending unusual large deployments of new nodes (i.e., adding over ten (10) percent total nodes in less than twenty-four (24) hours);
3. Customer's implementation of any significant configuration changes, including changes that lead to a greater than thirty percent (30%) change in a one week period or greater than fifty percent (50%) change in a one month period in the number of key objects in the system including but not limited to metrics, snapshots, nodes, events and business transactions; and
4. Any mis-configuration by Customer (as determined in Accela's sole discretion), including, without limitation, configuration errors and bad or unintended usage of the Subscription Services.
5. Force majeure or other circumstances beyond Accela's reasonable control that could not be avoided by its exercise of due care.

d. Failures of the Internet backbone itself and the network by which Customer connects to the Internet backbone or any other network unavailability.

e. Any window of time when Customer agrees that Subscription Services availability/unavailability will not be monitored or counted.

f. Any problems resulting from Customer combining or merging the Subscription Services with any hardware or software not supplied by Accela or not identified by Accela in the Specifications as being compatible with the Subscription Services.

g. Interruptions or delays in providing the Subscription Services resulting from telecommunication or Internet service provider failures.

h. Customer's or any third party's use of the Subscription Services in an unauthorized or unlawful manner.

Remedies for Excessive Downtime:

In the event the Availability of the Subscription Services falls below the Availability SLA in a given calendar month, Accela will pay Customer a service credit ("Service Credit") equal to the percentage of the fees set forth in the table below corresponding to the actual Availability of the Subscription Services during the applicable calendar month. Such Service Credit will be issued as a credit against any fees owed by Customer for the next calendar month of the Subscription Period or, if Customer does not owe any additional fees, then Accela will pay Customer the amount of the applicable Service Credit within thirty (30) days after the end of the calendar month in which such credit accrued. Such Service Credit will be in addition to any other remedies available to Customer at law, in equity or under this Agreement.

System availability is measured by the following formula: $x = (n - y) * 100 / n$

Notes:

- (1) "x" is the uptime percentage; "n" is the total number of hours in the given calendar month minus scheduled downtime; and "y" is the total number of downtime hours in the given calendar month.
- (2) Specifically excluded from "n" and "y" in this calculation are the exception times on scheduled upgrade and maintenance windows.

Service Availability	Percentage of Monthly Service Fees Credited
>99.5%	0%
95.0% - < 99.5%	5% (max of \$280)
90.0% - < 95.0%	10% (max of \$560)
80.0% - < 90.0%	20% (max \$840)
70.0% - < 80.0%	30% (max of \$1,120)
60.0% - < 70.0%	40% (max of \$1,400)
< 50%	50% (max of \$2,800)

Customer Account Login:

For Accela user interface access, Accela uses TLS 1.0 with AES 256 bit encryption, terminated at the server to ensure end-to-end security over the wire. Accela will also restrict user interface access to Customer corporate networks for additional security, except as otherwise requested by Customer.

Hosting:

Accela's SaaS platform (servers, infrastructure and storage) for the Subscription Services is and will remain hosted in one of the largest Tier III data centers in North America, specifically designed and constructed to deliver world-class physical security, power availability, infrastructure flexibility and growth capacity. Accela's data center provider is and will remain SAAS16 compliant, meaning it has been fully independently audited to verify the validity and functionality of its control activities and processes. Every Server for the Services is and will remain operated in a fully redundant fail-over pair to ensure high availability. Data is and will remain backed up nightly, stored redundantly and will be restored rapidly in case of failure. Accela also provides an off-site backup service, which is available at an additional cost. Security updates and patches are actively evaluated by engineers and will be deployed based upon the security risks and stability benefits they offer to Accela's SaaS platform and Customers.

**FIRST AMENDMENT
TO
ACCELA MASTER SUBSCRIPTION AGREEMENT**

This First Amendment ("First Amendment") is made and entered into by and between **ACCELA, INC.** ("ACCELA") whose address is 2633 Camino Ramon, Suite 500, San Ramon, CA 94583 and the **County of Santa Barbara** ("Customer") whose address is 105 East Anapamu Street, Suite 407, Santa Barbara, California 93101, and amends that certain Accela Master Subscription Agreement, with an effective date of August 14, 2018, between ACCELA and Customer ("Agreement").

WHEREAS, ACCELA and Customer wish to amend the Agreement, in accordance with the terms and conditions of this First Amendment to the Agreement; and

WHEREAS, ACCELA and Customer agree that this First Amendment modifies the Agreement between the parties commencing as of August 14, 2018.

WHEREAS, the capitalized terms not otherwise defined herein will have the meanings ascribed to them in the Agreement; and

NOW THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and subject to the terms and conditions set forth herein, the parties hereby agree as follows:

- 1. Section "11. SUBSCRIPTION PERIOD AND TERMINATION", of the Agreement is hereby amended by adding a new subsection to be titled "11.5. Termination for Non-appropriation." and inserting the following paragraph:**

"Notwithstanding anything to the contrary, Customer may terminate the Agreement for the non-appropriation of funds at any annual anniversary date of the Start Date as indicated on the Customer's Order Form. In the event of termination of the Agreement, Contractor shall be paid Contractor's fees up to the date of termination."

- 2. Except as so amended, all other provisions of the Agreement shall remain unchanged.**

COUNTY SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement to be effective on the date executed by COUNTY.

ATTEST:

COUNTY OF SANTA BARBARA:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: *Sheila LaGuerra*
Deputy Clerk

By: *John Hartman*
Chair, Board of Supervisors

Date: 7-12-22

Recommended for Approval
Department of General Services

By: *Janette D. Pell*
Director

APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

By: *Jeresa Martinez*
Deputy County Counsel

APPROVED AS TO FORM:

Greg Milligan, ARM
Risk Management

By: *Greg Milligan*

APPROVED AS TO ACCOUNTING
FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

By: *J. Schaffer*
Deputy

CONTRACTOR SIGNATURE PAGE

First Amendment to the Agreement for Services of Independent Contractor **Accela, Inc.** between the **County of Santa Barbara** and **Accela, Inc.**

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement to be effective on the date executed by County.

CONTRACTOR:

Accela, Inc.

DocuSigned by:

Aaron Haggarty

By: _____
A04499D928344D8...

Authorized Representative

Aaron Haggarty

Name: _____

Title: CLO _____

Accela, Inc. | 2633 Camino Ramon, San Ramon, CA 94583 | (925) 659-3200
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