

**ARLINGTON COUNTY, VIRGINIA**

**AGREEMENT NO. 530-15  
AMENDMENT NUMBER 8**

This Amendment Number 8 is made on the date of execution by the County and amends Agreement Number 530-15 dated March 31, 2016, ("Main Agreement") between Accela, Inc. ("Contractor") and the County Board of Arlington County, Virginia ("County").

The County and the Contractor amend the services as amended and described in **Exhibit 1** of this Amendment.

All other terms and conditions of the Main Agreement remain in effect.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

ACCELA, INC.

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

DocuSigned by:  
*Sharon Lewis*  
89B86B1AD301462...

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

DocuSigned by:  
*Dennis Michalis*  
56C2716C41B4461...

NAME: Sharon T. Lewis  
TITLE: Purchasing Division Chief

NAME: Dennis Michalis  
TITLE: CRO

DATE: 6/24/2020

DATE: 6/24/2020

**EXHIBIT 1**

**Amend the Main Agreement No. 530-15 as follows:**

- 1. Section 19, "Termination" of the Agreement is hereby amended by deleting the existing Section 19, "Termination" and inserting the following in lieu thereof:**

The County may terminate this Contract at any time for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all appropriate documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

**TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE**

**Termination for Unsatisfactory Performance.** If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 business days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. Upon such termination, the Contractor may apply for compensation for Contract services that the County previously accepted ("Termination Costs"), unless payment is otherwise barred by the Contract. The Contractor must submit any request for Termination Costs, with all supporting documentation to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for Termination Costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

**Termination for Breach or Default.** If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek Termination Costs.

**EXHIBIT 1**

Upon any termination pursuant to this section, the Contractor will be liable for damages for which is it legally responsible that arise from the default. The County will deduct such costs from any amount due to the Contractor, or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

**2. Section 21, "Intellectual Property Indemnification" of the Agreement is hereby amended by deleting the existing Section 21, "Intellectual Property Indemnification" and inserting the following in lieu thereof:**

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented invention, process or article manufacturer or used in the performance of this Contract that are finally awarded against County, provided that County provides (a) Contractor notice of such claim as soon practical and in no event later than would reasonably permit Contractor to respond to such claim, (b) reasonable cooperation to Contractor, at Contractor's expense, in the defense and/or settlement of such claim and (c) the sole and exclusive control of the defense, litigation and settlement of such claim. In the event that Contractor reasonably believes, in its sole discretion, that such claim may prevail or that the usage of the Subscription Services (as defined in Exhibit C) may be joined, Contractor may seek to (a) modify the Subscription Services such that it will be non-infringing (provided such modification does not materially reduce the functionality or performance of County's installed instance), (b) replace the Subscription Services with a service that is non-infringing that provides substantially similar functionality and performance, or, if the first two options are not commercially practicable, (c) terminate the remainder of the Subscription Period and refund any, pre-paid, unused fees received by Contractor. Contractor will have no liability under this Section to the extent for any claims arising from (i) any combination of the Subscription Services with products, services, methods of a third party; a modification of the Subscription Services that were either implemented by anyone other than Contractor or implemented by Contractor in accordance with Customer specifications (ii) any use of the Subscription Services in a manner that violates this Agreement or the instructions given to County by Contractor; (iii) a version of the Subscription Services other than the current, fully patched version, provided such updated version would have avoided the infringement; (iv) County's breach of this Agreement. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts

**EXHIBIT 1**

from any payments to the Contractor under this Contract. CONTRACTOR HAS THE SOLE RIGHT TO PROVIDE AND CONTROL THE DEFENSE OF ANY INTELLECTUAL PROPERTY ACTION. CONTRACTOR HAS NO INDEMNITY OBLIGATION FOR ANY CLAIM RESULTING FROM THE COUNTY'S MISUSE OF THE SYSTEM OR IN COMBINATION WITH THIRD PARTY PRODUCTS. THIS SECTION STATES THE ENTIRE OBLIGATION OF CONTRACTOR AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS RELATED TO THIS AGREEMENT AND THE CONTRACT.

**3. Section 22, "Copyright" of the Agreement is hereby amended by deleting the existing Section 22, "Copyright" and inserting the following in lieu thereof:**

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval, such approval to not be unreasonably delayed, denied or conditioned.

**4. Section 23, "Ownership and Return of Records" of the Agreement is hereby amended by deleting the existing Section 23, "Ownership and Return of Records" and inserting the following in lieu thereof:**

This Contract does not confer on the Contractor any ownership rights or right to disclose the County's data or inputs. The provisions of this section will survive any termination or cancellation of this Contract.

**5. Section 51, "Limitation of Liability" of the Agreement is hereby amended by deleting the existing Section 51, "Limitation of Liability" and inserting the following in lieu thereof:**

In no event will Accela's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by the County exceed two times (2X) the fees paid to Accela by the County for the applicable products or services during the 12 calendar months immediately preceding the circumstances that give rise to such claim(s) of liability, even if Accela or its agents have been advised of the possibility of such damages. The limitation does not apply to any action for intellectual property indemnification or personal injury, including death, or property damage.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR LIABILITY ARISING OUT OF COUNTY'S BREACH OF SECTION 2 OF EXHIBIT C OR EITHER PARTY'S LIABILITY FOR INTELLECTUAL PROPERTY INDEMNIFICATION, DEATH OR PERSONAL INJURY, 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 SERVICES, WHETHER BASED ON WARRANTY,

**EXHIBIT 1**

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.

6. Exhibit B, "Pricing and Payment Schedule" of the Agreement is hereby amended by deleting the existing Exhibit B, "Pricing and Payment Schedule" and inserting the following in lieu thereof:

**Exhibit B  
Pricing and Payment Schedule**

a. **Fee Summary**

Term	July 1, 2020 - June 30, 2021	July 1, 2021 - June 30, 2022	July 1, 2022 - June 30, 2023	July 1, 2023 - June 30, 2024	July 1, 2024 - June 30, 2025	July 1, 2025 - June 30, 2026	July 1, 2026 - June 30, 2027
<b>SaaS Licenses</b>	\$555,930	\$567,049	\$578,390	\$589,957	\$601,757	\$613,792	\$626,067
<b>ERD</b>	\$48,000	\$48,960	\$49,939	\$50,938	\$51,957	\$52,996	\$54,056
<b>Two New Environments</b>	\$20,000	\$20,400	\$20,808	\$21,224	\$21,649	\$22,082	\$22,523
	<b>\$623,930</b>	<b>\$636,409</b>	<b>\$649,137</b>	<b>\$662,120</b>	<b>\$675,362</b>	<b>\$688,869</b>	<b>\$702,647</b>

b. **SaaS License Summary**

Product	Quantity
SaaS Licenses	355
Enhanced Reporting Database (ERD)	1
Additional Environments	2

- c. For the term(s) following the term ending June 30, 2027, SaaS Licenses, ERD and two additional Environments shown in the Fee Summary in 6a above may be negotiated subject to the following:

Number of years in term	Annual uplift
5 years (or more) term	Not to exceed 3%
3 – 4 year term	Not to exceed 5%
Less than 3 years term	Not to exceed 6%

**EXHIBIT 1****Implementation Services Fees**

- d. Accela will provide Services to support the County in completing the deliverables described in Appendix B for Phase II on a Time and Materials basis which will be billed monthly based on timesheets approved by the County. Accela will provide qualified resources to perform services based on the roles identified in Table 2A below and in accordance with a mutually approved project and staffing plan. Throughout the course of the project, one resource may perform multiple roles, and each role may be filled by more than one resource, except where a specific role is articulated in the Statement of Work. Accela has allocated 4,219 hours to this effort which will be billed as incurred for a total not to exceed amount of \$801,610 exclusive of travel expenses.
- e. Accela shall not exceed the total amount without the prior approval of the County and shall not continue to provide services after the total estimate has been reached without a written amendment agreed upon by the parties. Weekly timesheets will be sent to the County by Friday of the following week for sign-off by the County. Invoices will be sent for hours worked every month, based on the approved hours. Invoices are due Net 45 of the invoice date. Except as otherwise agreed by the parties in writing, fees due are quoted and payable in United States dollars, and payment obligations are non-cancelable, and fees paid are non-refundable.

**TABLE 2A: STATEMENT OF WORK COSTS**

Project Role	Estimated Hours	Hourly Rate	Extended Price
Project Manager	784	\$190	\$ 148,960
Solution Architect	136	\$190	\$ 25,840
Technical Consultant	1,320	\$190	\$ 250,800
Solution Lead	504	\$190	\$ 95,760
Data Conversion Consultant	675	\$190	\$ 128,250
Scripting Developer	800	\$190	\$ 152,000
<b>Total Estimated Hours:</b>	<b>4,219</b>	<b>Total Estimated Costs:</b>	<b>\$801,610</b>

- f. Any hours remaining on the project when Accela has completed the scope of this project will not be used for other work without a Change Order from the County delineating the scope. Any hours remaining will expire 3 months after completion of Phase IIc, as described in Exhibit 1 of Amendment 7 and the County will not be invoiced for any remaining hours.
- g. Additional implementation Services outside of the scope of services described in Appendix B will be billed at \$190/hour for the remaining one-year terms ending December 31, 2021. The hourly rate for implementation services outside of this scope in the five subsequent one-year terms will escalate 3% each year through the year ending December 31, 2026, as shown in Table 4A below.

**EXHIBIT 1****TABLE 4A: ADDITIONAL IMPLEMENTATION SERVICE COSTS**

<b>Contract Year</b>	<b>Term</b>	<b>Hourly implementation Fee outside scope services described in Appendix B</b>
4	Jan 1 – Dec 31, 2020	\$190
5	Jan 1 – Dec 31, 2021	\$190
6	Jan 1 – Dec 31, 2022	\$195.70
7	Jan 1 – Dec 31, 2023	\$201.57
8	Jan 1 – Dec 31, 2024	\$207.62
9	Jan 1 – Dec 31, 2025	\$213.85
10	Jan 1 – Dec 31, 2026	\$220.26

**h. TRAVEL EXPENSES**

Travel expenses will be billed as incurred in accordance with the County's Travel and Expense policy, as shown in Exhibit 2 of Amendment 7.

**i. CHANGE MANAGEMENT**

The estimated fees for this Statement of Work are predicated on the timely completion of project tasks and Deliverables. All work will be performed at the County's direction. If a change is identified that will impact the project approach, timeline, resources or scope, the County and Accela Project Managers will invoke the Change Management process to determine the impact to the project budget. Accela will then issue a Change Order Template (see Appendix C) with the proposed change. The County will subsequently prepare an amendment to the contract and such amendment will be executed by both parties before any change order takes effect.

**7. Exhibit C, "Accela Licensing Agreement" of the Agreement is hereby amended by deleting the existing Exhibit C, "Accela Licensing Agreement" and inserting the following in lieu thereof:**

**Exhibit C****Accela Licensing Agreement**

**ACCELA SUBSCRIPTION SERVICES  
AGREEMENT**

This Accela Subscription Services Agreement (this "**Agreement**") is entered into as of the date of the applicable Order, as defined below, that incorporates these terms (the "**Effective Date**") by and between Accela, Inc. and the entity identified in such Order ("**Customer**").

**1. DEFINITIONS**

1.1. "**Accela Systems**" means the information technology infrastructure used by or on behalf of Accela in performing the Subscriptions Services, including all computers, software (including but not limited to Accela Software), hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Accela or its third party suppliers.

1.2. **"Aggregate Data"** means data and information related to Customer's use of the Subscription Services, including anonymized analysis of all data processed in the Subscription Services, that is used by Accela in an aggregate and anonymized manner, including compiling statistical and performance information related to the provision and operation of the Services.

1.3. **"Authorized User"** means one named employee (identified by a unique email address), contractor or agent of Customer for whom Customer has purchased a subscription to the Subscription Services and who is authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement.

1.4. **"Consulting Services"** means packaged or time and materials consulting, review, training or other services (but excluding Subscription and Support Services) delivered by Accela to Customer pursuant an Order, a current description of the currently available Consulting Services Description & Policy is available at [www.accela.com/terms](http://www.accela.com/terms).

1.5. **"Customer Data"** means the content, materials, and data that Customer, Authorized Users, and External Users enter into the Subscription Services. Customer Data does not include any component of the Subscription Services, material provided by or on behalf of Accela, or Aggregate Data.

1.6. **"External Users"** means third part users of the Subscription Services that access the public facing interfaces of the Subscription Services to submit queries and requests to facilitate communications between such third party and Customer.

1.7. **"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.

1.8. **"Order"** means an Accela order form or other mutually acceptable document fully executed between Customer and Accela that incorporates this Agreement.

1.9. **"Service Availability Policy"** means the service availability and security polices located at [www.accela.com/terms](http://www.accela.com/terms).

1.10. **"Subscription Services"** means the civic administration services, comprised of the Accela System, Software, and Support Services, to which Customer may license access to in accordance with the terms herein.

1.11. **"Software"** means any software (including client software for Authorized Users' devices) and Documentation that Accela uses or makes available as part of the Subscription Services.

1.12. **"Support Services"** means those technical and help services provided by Accela in accordance with the Support Services Policy located at [www.accela.com/terms](http://www.accela.com/terms).

1.13. **"Documentation"** means the then-current technical and functional user documentation in any form made generally available by Accela for the Subscription Services.

1.14. **"Subscription Period"** means the duration of Customer's authorized use of the Subscription Services as designated in the Order.

## 2. **USAGE AND ACCESS RIGHTS**

2.1. **Right to Access.** Subject to the terms and conditions of this Agreement Accela hereby grants to Customer a limited, non-exclusive, non-transferrable right and license during the Subscription Period, to permit: (i) Authorized Users to access and use the internal and administrative interfaces of the Subscription Services in accordance with the Documentation to support Customer's internal business purposes and (ii) its External Users the ability to access and use the publicly available interfaces to submit requests and information to Customer. Each instance of the Subscription Service shall be provisioned with the amount of storage set forth in the Order and additional storage may be purchased at the then current rates.

2.2. **Support Services & Availability.** During the Subscription Period, Accela shall provide to Customer the Support Services specified in the Order and shall make all commercially efforts to attain the service levels as specified in the applicable policies. The remedies set forth in the Support Services & Service Level Policies are the sole and exclusive remedies for any breach of the services level. Customer grants Accela a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into its



software or services any suggestions or other feedback provided by Customer or Authorized Users relating to the operation or features of the Subscription Services.

2.3. Consulting Services. Customer may purchase Consulting Services from Accela by executing an Order for such services. All prices are exclusive of travel and expenses, which will be invoiced at actual cost, without markup, and will comply with the Consulting Services Policy or as otherwise agreed in the applicable Order. If applicable, one Consulting Services day shall be equal to eight (8) hours.

2.4. Restrictions on Use. Customer shall not, and shall not permit others to (i) use or access the Subscription Services in any manner except as expressly permitted by the Agreement, including but not limited to, in a manner that circumvents contractual usage restrictions set forth in this Agreement; (ii) 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 herein; (iii) use the Subscription Service in a way that; (a) violates or infringes upon the rights of a third party; or (b) store or transmit of libelous, tortious, or otherwise unlawful material or malicious code or viruses; (vi) create derivative works, reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the Subscription Services (except to and only to the extent such rights are proscribed by law); (vii) interfere with or disrupt the security, integrity, operation, or performance of the Subscription Services; (viii) access, use or provide access or use to the Subscription Services or Documentation for the purposes of competitive analysis, the development, provision, or use of a competing software, SaaS or product or any other purpose that is to Accela's detriment or commercial disadvantage, (ix) provide access to the Subscription Services to competitors of Accela, (x) access or use components of the Subscription Service not licensed by Customer; (xi) use or allow the use of, the Subscription Services by anyone located in, under the control of, or that is a national or resident of a U.S. embargoed country or territory or by a prohibited end user under Export Control Laws (as defined in Section 12.3); (xi) remove, delete, alter, or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Subscription Services; or (xii) access or use the Subscription Services in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Subscription Services could lead to personal injury or severe physical or property damage.

2.5. Ownership. Accela retains all Intellectual Property Rights, including all rights, title and license to the Subscription Service, Software, Accela System, Support Services, Consulting Services, and Aggregate Data, any related work product of the foregoing and all derivative works thereof by whomever produced; provided however, that to the extent such materials are delivered to Customer as part of the Subscription, Consulting or Support Services then Customer shall receive a limited license, consistent with the terms of Section 2 to use such materials during the Subscription Period.

2.6. Customer's Responsibilities. Customer will (i) be responsible for meeting Accela's applicable minimum system requirements for use of the Subscription Services set forth in the Documentation; (ii) be responsible for Authorized Users' compliance with this Agreement and for any other intentional activity 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 Services and Customer Data under its account, and notify Accela promptly of any such unauthorized access or use, and (v) use the Subscription Services only in accordance with the applicable Documentation, laws and government regulations.

### **3. PAYMENT TERMS**

3.1. Purchases Directly from Accela. Except as otherwise set forth in an Order, Subscription fees shall be invoiced annually in advance and such fees shall be due and payable on the first day of the Subscription and on each anniversary thereafter for each renewal, if any. All Subscription fees are exclusive of any taxes,

levies, duties, withholding or similar governmental assessments of any nature (collectively, "**Taxes**"). If any such Taxes are owed or payable for such transactions, they shall be paid separately by Customer without set-off to the fees due Accela.

3.2. Purchases from Authorized Resellers. In the event that Customer has purchased any products or services through a reseller, subject to these terms, any separate payment arrangements and terms shall be exclusively through such reseller and Accela is not a party to such transactions. Accela's sole obligations are set forth herein and Customer acknowledges that its rights hereunder may be terminated for non-payment to such third party.

#### **4. CONFIDENTIALITY**

As used herein, "**Confidential Information**" means all confidential information disclosed by a one party to this Agreement to the other party of this Agreement 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 without breach of any obligation owed to the disclosing party, (iii) is received without restriction from a third party without breach of any obligation owed to the disclosing party, or (iv) was independently developed by the receiving party. Each 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 except as permitted herein, and (ii) will limit access to Confidential Information to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound to protect such Confidential Information consistent with this Agreement. The receiving party may disclose Confidential Information 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 request and cost, to contest, limit, or protect the disclosure.

#### **5. CUSTOMER DATA**

5.1. Ownership. 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 as otherwise set forth explicitly in Section 5.

5.2. The Customer warrants that it exclusively owns the Customer Data and that it has both the right and authority to provide such Customer Data to Accela. The Customer retains full ownership of its Customer Data and grants to Accela a limited, non-exclusive, non-transferrable license to use said Customer Data only to perform Accela's obligations in accordance with the terms and conditions of this Agreement. Within thirty (30) calendar days following termination or expiration of this Agreement, the Customer may request that Accela provide a complete copy of the Customer Data, as such may be updated or modified by the Customer's use of the Subscription Services, to the Customer in a machine-readable format. Accela will comply within seventy-two (72) hours of the request, provided that the Customer (a) pays all costs and associated with such copying, at the then current hourly service rate, and (b) pays all unpaid amounts due to Accela. If Customer elects to transition to another hosting option, including self-hosting or hosting by third parties, Accela will ensure uninterrupted access to the Customer Data and Subscription Services.

5.3. Customer database dump file. Throughout the Term, upon the request of Customer, Accela will provide the Customer with: (i) a copy of its Customer Data in a SQL database dump file, provided once per calendar quarter - the Customer has the option to request a more frequent export if desired, but will not exceed once per calendar week, and (ii) a Crystal Report production placement, not more than ten times per annual term.

5.4. Usage. Customer shall be responsible for Customer Data as entered in to, applied or used in the

Subscription Services. Customer acknowledges that Accela generally does not have access to and cannot retrieve lost Customer Data. Customer grants to Accela the non-exclusive right to process Customer Data (including personal data) for the sole purpose of and only to the extent necessary for Accela:

(i) to provide the Subscription Services; (ii) to verify Customer's compliance with the restrictions set forth in Section 2.4 (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.

## 6. WARRANTIES AND DISCLAIMERS

6.1. Accela Subscription Services Warranty. During the Subscription Period, Accela warrants that Subscription Services shall perform materially in accordance with the applicable Documentation. 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 (a) repair the Subscription Services in question; (b) replace the Subscription Services in question with those of substantially similar functionality; or, after making all commercially reasonable attempts to do the foregoing (c) terminate the applicable Subscription Services and refund all unused, prepaid fees paid by Customer for such non-compliant Subscription Services.

6.2. Consulting Services. For ninety (90) days from the applicable delivery, Accela warrants that Consulting Services shall be performed in a professional and workmanlike manner. 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 (a) re-perform the Consulting Services in a compliant manner; or, after making all commercially reasonable attempts to do the foregoing (b) refund the fees paid for the non-compliant Consulting Services.

6.3. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ACCELA MAKES NO ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, SECURITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in any of Customer's purchase order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

6.4. Cannabis-Related Activities. If Customers purchases any Subscription Services for use with any cannabis related activities, the following additional disclaimers shall apply: Accela is considered a software service provider to its customers and not a cannabis- related business or agent thereof. In addition to the foregoing, Accela only retains Subscription Services fees of this Agreement from its Customer for general software services, a state or local government agency, and does not retain these fees from any type of External Users. It is the sole responsibility of the Customer to offer state law compliant services, which may be coordinated and facilitated through the use of the Subscription Services. 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.

6.5. Customer acknowledges that the Subscription Services is not guaranteed to operate without interruptions, failures, or errors.

## 7. SECURITY

Accela has implemented commercially viable and reasonable information security processes, policies and technology safeguards to protect the confidentiality and integrity of Customer Data, personal data protect

against reasonably anticipated threats. Customer acknowledges that, notwithstanding security features of the Subscription Services, 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 6, Accela will have no liability for any such security breach. If Customer or Authorized Users use the Subscription Services 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.

## 8. THIRD PARTY SERVICES

Customer may choose to obtain a product or service from a third-party that is not directly produced by Accela as a component of the Subscription Services (“**Third Party Services**”) and this may include third-party products resold by Accela. Accela assumes no responsibility for, and specifically disclaims any liability, warranty or obligation with respect to, any Third-Party Service or the performance of the Subscription Services (including Accela’s service level commitment) when the Subscription Services are used in combination with or integrated with Third-Party Services.

**9. 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, upon Customer’s request Accela will provide Customer Data and associated documents in a database dump file; 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 mutually agreed. If the Subscription Services are nearing expiration date or are otherwise terminated, Accela will initiate its data retention processes, including the deletion of Customer Data from systems directly controlled by Accela. Accela’s current Data Storage Policy can be accessed [www.accela.com/terms/](http://www.accela.com/terms/).

**10.** Proactive and regular updates on planned maintenance are posted on the Accela Trust site: <http://trust.accela.com>.

**11.** Notwithstanding anything to the contrary, the below target resolution goals only apply to this particular Agreement, Customer, Order, and Subscription Service during the Term:

Priority	Definition	Response Goal	Resolution Goal
<b>Critical Severity – Priority 1</b>	System or application is non-functional or seriously affected and there is no reasonable workaround available. E.g. Business is halted.	Confirmation of receipt within 1 business hour. Provide updates as information arrives or at the interval specified by the County.	Upon confirmation of receipt, Accela will put forth its best effort to provide a workaround, fix, or estimated completion date within 72 hours after the problem has been diagnosed and/or replicated, provided there is a County representative available to assist with issue diagnosis and testing during the resolution process

<b>High Severity – Priority 2</b>	System or application is affected and there is no workaround available or the workaround is impractical. E.g. System response is very slow; day to day operations continue but are impacted by the work around.	Confirmation of receipt within 4 business hours	Accela will put forth its best effort to provide a workaround or fix or estimated completion date within 14 business days after the problem has been diagnosed and/or replicated
<b>Medium Severity – Priority 3</b>	System or application feature is non-functional; however a convenient workaround exists. E.g. Non-critical feature is unavailable or requires additional user intervention	Confirmation of receipt within 8 business hours	Accela will put forth its best effort to provide a workaround or fix or estimated completion date within 21 business days after the problem has been diagnosed and/or replicated
<b>Low Severity - Priority 4</b>	System or application feature works, but there is a minor problem. E.g. Incorrect label, or cosmetic defect.	Confirmation of receipt within 24 business hours	Resolution for the issue may be released as a patch set or be incorporated into a future release of the product.

**12.** Notwithstanding anything to the contrary, the below System Availability and Performance goals only apply to this particular Agreement, Customer, Order, and Subscription Service during the Term:

The performance requirements for the hosted system, excluding planned maintenance downtime, are set forth below. Uptime is calculated on a calendar-month basis as  $U=O/(M-P)*100$ , where U is the Uptime as used in the table below, O is the amount of operational uptime for the hosted system during a given calendar month, M is the number of minutes in said calendar month, and P is the number of minutes of planned downtime during said calendar month.

Uptime	Credit
Greater than or equal to 99.9%	None
Less than 99.9% but greater than or equal to 99.0%	15% of pro-rated monthly hosting fees
Less than 99.0% but greater than or equal to 95.0%	35% of pro-rated monthly hosting fees
Less than 95.0%	100% of pro-rated monthly hosting fees

**13.** Policies for Scheduled Maintenance, including lead time for acceptance testing in non-Production environments, can be found in the Accela Availability and Security Policy at: <https://www.accela.com/wp-content/uploads/2020/02/Accela-Service-Availability-and-Security-Policy.pdf>.

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**14.** Exhibits D, E, H, and I are hereby deleted in their entirety.