



## 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 System**” 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, contractor, or agent of Customer (each identified by a unique email address) 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. The current Consulting Services 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 “**Documentation**” means the then-current technical and functional user documentation in any form made generally available by Accela for the Subscription Services.

1.7 “**External Users**” means third party 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.

1.8 “**Intellectual Property Rights**” means any patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, know-how, and any other intellectual property rights, in all cases whether or not registered or registrable and recognized in any country or jurisdiction in the world.

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



1.10 **"Service Availability Policy"** means the Service Availability and Security Policy located at [www.accela.com/terms/](http://www.accela.com/terms/).

1.11 **"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.

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

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

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-transferable 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 & Service Availability. During the Subscription Period, Accela shall provide to Customer the Support Services specified in the Order and shall make all commercially reasonable efforts to attain the service levels specified in the applicable policies. The remedies set forth in the Support Services and Service Availability Policy are the sole and exclusive remedies for any breach of the service levels. 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 Purchasing 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 located at [www.accela.com/terms/](http://www.accela.com/terms/) 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, 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) stores or transmits libelous, tortious, or otherwise unlawful material or malicious code or viruses; (iv) 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); (v) interfere with or disrupt the security, integrity, operation, or performance of the Subscription Services; (vi) access, use, or provide access or use to the Subscription Services or Documentation for the purposes of competitive analysis or 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; (vii) provide access to the Subscription Services to competitors of Accela; (viii) access or use components of the Subscription Service not licensed by Customer; (ix) 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, Compliance with Laws); (x) 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 (xi) 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 Services, Consulting Services 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 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 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 other invoices shall be due and payable net thirty (30) from the date of the applicable invoice. All amounts payable to Accela under this Agreement shall be paid by Customer in full without any setoff, deduction, debit, or withholding for any reason. Any late payments shall be subject to an additional charge of the lesser of 1.5% per month or the maximum permitted by law. All Subscription Services 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 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 Usage. Customer shall be responsible for Customer Data as entered into, 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 on Use) 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 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.

5.3 Use of Aggregate Data. Customer agrees that Accela may collect, use and disclose Aggregate Data derived from the use of the Subscription Services for industry analysis, benchmarking, analytics, marketing and other business purposes. All Aggregate 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.

## **6. WARRANTIES AND DISCLAIMERS.**

6.1 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 (c), after making all commercially reasonable attempts to do the foregoing, terminate the applicable Subscription Services and refund all unused, prepaid fees paid by Customer for such non-compliant Subscription Services.

6.2 Consulting Services Warranty. 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 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.

6.4. Cannabis-Related Activities. If Customer 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.

7. **INDEMNIFICATION.** To the furthest extent allowed by law, ACCELA shall defend, indemnify and hold harmless Customer from and against any and all direct and indirect claims, losses, liabilities, damages, costs and expenses (including losses and costs incurred by Customer, and any reasonable attorney's fees and costs) to the extent they arise from ACCELA's negligence or willful misconduct that results in personal injury, death, or tangible property damage; a breach of ACCELA's confidentiality (information not of public record) obligations arising from ACCELA's negligence or willful misconduct; or ACCELA's violation of a law applicable to ACCELA's performance under the contract. Notwithstanding the foregoing, in no event shall ACCELA be responsible for indemnifying and defending Customer for third-party claims arising solely out of the negligence of Customer. Customer will notify ACCELA promptly in writing of the claim and give ACCELA sole control over its defense or settlement. Customer agrees to provide ACCELA with reasonable assistance, cooperation, and information in defending the claim at ACCELA's expense.

If ACCELA subcontracts all or any portion of the services to be performed under this Agreement, ACCELA will require each subcontractor to indemnify, hold harmless and defend Customer and your officers, officials, employees, agents, and volunteers in accordance with this paragraph.

This section shall survive termination or expiration of this Agreement.

8. **LIMITATION OF LIABILITY.** EXCEPT FOR LIABILITY ARISING OUT OF EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY, CLAIMS, LOSSES, LIABILITIES, DAMAGES, COSTS, AND EXPENSES DETAILED IN SECTION 7, OR CUSTOMER'S BREACH OF SECTION 2, 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, SHALL EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT. EXCEPT FOR LIABILITY ARISING OUT OF CUSTOMER'S BREACH OF SECTION 2 OR EITHER PARTY'S LIABILITY FOR 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, 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.



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

10. **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.

## 11. **TERM AND TERMINATION.**

11.1 **Agreement Term.** This Agreement shall become effective on the Effective Date and shall continue in full force and effect until the expiration of any Subscription Periods set forth in an applicable Order governed by the Agreement.

11.2 **Subscription Periods & Renewals.** Subscription Periods begin as specified in the applicable Order and, unless terminated earlier in accordance with this Agreement, continue for the term specified therein. Except as otherwise specified in the applicable Order, (a) all Subscription Services will automatically renew for additional Subscription Periods equal to the expiring Subscription Period, unless either party gives the other at least sixty (60) days' notice of non-renewal before the end of the relevant Subscription Period and (b), Orders may only be cancelled or terminated early in accordance with Section 11.3. Subscription Services renewals may be subject to an annual increase, for which Accela shall provide Customer notice prior to the renewal of the Subscription Period. In the event of any non- renewal or other termination, Customer's right to use the Subscription Services will terminate at the end of the relevant Subscription Period.

11.3 **Termination or Suspension for Cause.** A party may terminate this Agreement and Subscription Services license granted hereunder 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. Either party may terminate immediately if the other party files for bankruptcy or becomes insolvent. Accela may, at its sole option, suspend Customer's or any Authorized User's access to the Subscription





Services, or any portion thereof, immediately if Accela: (i) 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 Services in a way that violates this Agreement and could expose Accela or any other entity to harm or legal liability; (iii) is or reasonably believes it is required to do so by law or court order or; (iv) Customer's payment obligations are more than ninety (90) days past due, provided that Accela has provided at least thirty (30) days' notice of such suspension for delinquent payment. Should Customer terminate this Agreement for cause, Accela will refund a pro-rata portion of unused, pre-paid fees.

**11.4 Termination By Customer For Non-Appropriation.** In the event of non-appropriation relating to the Agreement, Customer shall have the right to terminate the Agreement at the end of any fiscal year of Customer, in the manner and subject to the terms specified in this paragraph. Customer shall endeavor to give written notice of such termination not less than sixty (60) days prior to the end of such fiscal year and shall notify Accela of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve-month fiscal period of Customer which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of the Customer or Customer's governing body to appropriate money for any fiscal year of Customer sufficient for the continued performance of the Agreement by Customer.

**11.5 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 provided Customer Data and associated documents in a database dump file; provided that Customer pays (a) all costs of and associated with such copying, as calculated at Accela's then-current time-and-materials rates, and (b) 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 as mutually agreed between the parties. 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/).

**11.6 Survival.** Sections 2.5 (Ownership and Proprietary Rights), 4 (Confidentiality), 6.3 (Disclaimer), 8 (Limitation of Liability), 11.4 (Effect of Termination), 11.5 (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) three days after sending registered, return receipt requested, post or; (iii) one day after sending by commercial overnight carrier. 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 Services.

**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 subject matter of this Agreement will be the state and federal courts located in the Eastern 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. Further, in connection with the services performed under this Agreement and Customer's use of the Subscription Services, the parties agree to comply with all applicable anti-corruption and anti-bribery laws, statutes, and regulations.

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

12.5 Publicity. Notwithstanding anything to the contrary, each party will have the right to publicly announce the existence of the business relationship between parties without disclosing the specific terms of the Agreement.

12.6 Miscellaneous. 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. 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. 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. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or similar relationship between the parties. 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 it 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, no additional or conflicting terms or conditions stated in any of Customer's purchase order documentation or otherwise will be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.



## **INSURANCE REQUIREMENTS**

### **Subscription Services Agreement between City of Fresno ("CUSTOMER") and Accela ("ACCELA")**

#### **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. Commercial General Liability Coverage providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. Auto Coverage, providing liability coverage arising out of the ownership, maintenance, or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles as applicable.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Technology Liability (Errors and Omissions) and Cyber Liability insurance appropriate to ACCELA'S profession. Coverage shall be sufficiently broad to respond to duties and obligations as is undertaken by ACCELA in this agreement and shall include but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines penalties and credit monitoring expenses with limits sufficient to respond to these obligations.

#### **MINIMUM LIMITS OF INSURANCE**

ACCELA, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CUSTOMER, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured and shall not expand upon the liability of ACCELA under the terms of indemnification and limitation of liability:



1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and,
  - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY:**  
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.
5. **TECHNOLOGY PROFESSIONAL LIABILITY & CYBER LIABILITY** insurance with limits of not less than:
  - (i) \$2,000,000 per claim/occurrence; and,
  - (ii) \$4,000,000 policy aggregate

#### **UMBRELLA OR EXCESS INSURANCE**

In the event ACCELA purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CUSTOMER, its officers, officials, employees, agents, and volunteers.

#### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

ACCELA shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and ACCELA shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance

#### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CUSTOMER, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. ACCELA shall establish additional insured status for the Customer and for all ongoing and completed operations by use of an executed manuscript insurance company endorsement providing additional insured status.



2. The coverage shall contain no special limitations on the scope of protection afforded to CUSTOMER, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, ACCELA'S insurance coverage shall be primary insurance with respect to the CUSTOMER, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CUSTOMER, its officers, officials, employees, agents, and volunteers shall be excess of ACCELA'S insurance and shall not contribute with it. ACCELA shall establish primary and non-contributory status by using an executed manuscript insurance company endorsement that provides primary and non-contributory status.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: ACCELA and its insurer shall waive any right of subrogation against CUSTOMER, its officers, officials, employees, agents, and volunteers.

If the Technology Liability or Cyber Liability insurance policies are written on a claims-made form:

1. The retroactive date must be shown and must be before the effective date of the Agreement or the commencement of work by ACCELA.
2. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a three (3) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by ACCELA, ACCELA must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CUSTOMER for review.
5. These requirements shall survive expiration or termination of the Agreement.

Upon issuance by the insurer, broker, or agent of a notice of cancellation, or non-renewal, ACCELA shall furnish CUSTOMER with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CUSTOMER, ACCELA shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days after to the expiration date of the expiring policy.

The fact that insurance is obtained by ACCELA shall not be deemed to release or diminish the liability of ACCELA, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by ACCELA.



Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of ACCELA, its principals, officers, agents, employees, persons under the supervision of ACCELA, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If ACCELA subcontracts any or all of the services to be performed under this Agreement, ACCELA shall require and verify that subcontractors maintain insurance that is usual and customary to the service or product they are providing in relation to this agreement.

#### **VERIFICATION OF COVERAGE**

ACCELA shall furnish CUSTOMER with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CUSTOMER'S Risk Manager or his/her designee prior to CUSTOMER'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. This requirement shall survive expiration or termination of this Agreement.