

Attachment 4

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Monterey County Board of Supervisors

168 West Allsal Street,
1st Floor
Salinas, CA 93901
www.co.monterey.ca.us

Board Order

Agreement No. A-14427

A motion was made by Supervisor Mary Adams, seconded by Supervisor Chris Lopez to:

- a. Approve a Non-Standard Agreement with Accela, Inc. to provide implementation, hosting, and maintenance for subscription services for the Accela software product for a total not-to-exceed amount of \$1,000,026, for a term effective July 1, 2019 through June 30, 2022; and
- b. Authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute the Non-Standard Agreement and three (3) future amendments to the Agreement, where the amendments do not significantly alter the scope of work or change the approved Agreement amount, subject to review and approval by County Counsel, and do not exceed ten percent (10%) of the total Agreement amount.

PASSED AND ADOPTED on this 25th day of June 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams

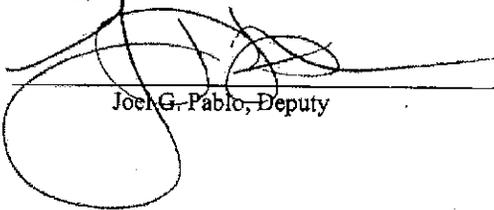
NOES: None

ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting June 25, 2019.

Dated: June 26, 2019
File ID: A 19-226
Agenda Item No. 87

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Joel G. Pablo, Deputy

**COUNTY OF MONTEREY STANDARD AGREEMENT
(MORE THAN \$100,000)**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Accela, Inc.

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide implementation, hosting and maintenance for the subscription services for the Accela software product.

2.0 PAYMENT PROVISIONS

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$ 1,000,026.15.

3.0 TERM OF AGREEMENT

3.01 The term of this Agreement is from July 1, 2019 to June 30, 2022, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

3.02 ~~The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.~~

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS

(Contractor's Initials) 06/14/2019
(Date)

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

- Exhibit A Scope of Services/Payment Provisions
- Exhibit B Accela, Inc.'s Privacy Policy
- Exhibit C Modification to Agreement Provisions

5.0 PERFORMANCE STANDARDS.

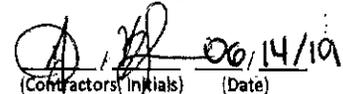
- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 ~~During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.~~


(Contractors' Initials) (Date)

7.02 ~~The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.~~

AD
(Contractors' Initials)
09/14/19
(Date)

7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

8.01 CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:
Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:
All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to

the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 **Insurance Coverage Requirements:** Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal,

 06/14/19
(Contractors' Initials) (Date)

state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

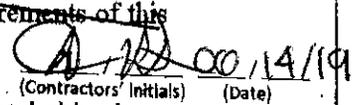
13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
<u>Dalia M. Mariscal-Martinez, Management Analyst II</u>	<u>Mitch Knight, Vice President of Sales</u>
Name and Title	Name and Title
<u>County of Monterey, Resource Management Agency</u>	<u>Accela, Inc.</u>
<u>1441 Schilling Place, South 2nd Floor</u>	<u>2633 Camino Ramon, Suite 500</u>
<u>Sallinas, California 93901</u>	<u>San Ramon, California 94583</u>
Address	Address
<u>(831) 755-8966</u>	<u>(925) 659-3200</u>
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. ~~The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.~~
Please refer to Exhibit C of Agreement.  (Contractors' Initials) (Date) 00/14/19
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

By: 
Contracts/Purchasing Officer

Date: 6/27/19

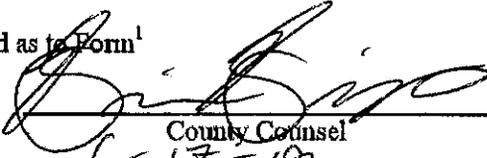
By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

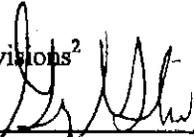
Date: _____

Approved as to Form¹

By: 
County Counsel

Date: 6-17-19

Approved as to Fiscal Provisions²

By: 
Auditor/Controller

Date: 6/18/19

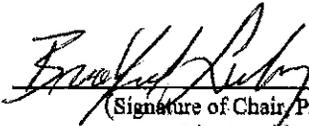
Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

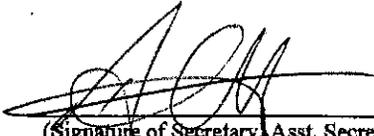
CONTRACTOR

Accela, Inc.
Contractor's Business Name*

By: 
(Signature of Chair, President, or Vice-President)*

BRADFORD LEAHY, VICE PRESIDENT OF REVENUE OPERATIONS
Name and Title

Date: JUNE 14, 2019

By: 
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

AARON HASSARBY, Acting Secretary
Name and Title

Date: June 14, 2019

County Board of Supervisors' Agreement Number: _____, approved on (date): _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required
²Approval by Auditor-Controller is required
³Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

**To Agreement by and between
County of Monterey, hereinafter referred to as “County”
and
Accela, Inc., hereinafter referred to as “CONTRACTOR”**

County and CONTRACTOR, together, are referred to as the “Parties” and each individually as a “Party.”

1. DEFINITIONS

1.1 **“Account”** means a unique account established by County to enable its Authorized Users to access and use the Subscription Services, hereinafter, “Services”.

1.2 **“Authorized User”** means one (1) individual natural person, authorized by County to use the Services and for whom County has purchased a subscription to the Services. Authorized Users may include but are not limited to County’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 Services.

1.3 **“County Data”** means any and all content, eDocuments, materials, data and information that County, its Authorized Users, or other end users enter into the Services including but not limited to, personal information, information exchanged between County and Authorized User or Authorized User and a third party using the Services, information used to identify account names or numbers, routing information, usernames, passwords, access codes and prompts. County Data does not include any component of the Services or material provided by or on behalf of CONTRACTOR.

1.4 **“County”** means the entity that purchases a subscription to the Services, directly from CONTRACTOR or through an authorized reseller, distributor, or other channel partner of CONTRACTOR.

1.5 **“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.

1.6 **“Optional Subscription Services”** mean the optional add-ons to the Services that may be available for purchase either directly from CONTRACTOR or through an authorized reseller or partner of CONTRACTOR, as more particularly described or identified in this Exhibit A.

1.7 **“Services Order Form”** means written orders provided by CONTRACTOR that sets forth the pricing and options of the services (or, where applicable, to purchase Optional Subscription Services).

1.8 **“Services”** or **“services”** means the cloud-based network security service(s) for which County has obtained a subscription either directly from CONTRACTOR or through an authorized reseller or other partner of CONTRACTOR. Unless otherwise specified herein or other applicable contractual terms, all references to “Services” or “services” will be deemed to include any and all Optional Services which have been authorized by County.

1.9 **“Software”** means any software (including County software for Authorized Users’ devices) that CONTRACTOR makes available for download or otherwise provides for use with the services.

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

1.11 **“Subscription Period(s)”** means the duration of County and Authorized User’s active, paid access to the Services, as designated in this Exhibit A.

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

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

2. USAGE AND ACCESS RIGHTS

2.1 Right to Access. CONTRACTOR hereby grants to County 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 its affiliates’ internal business purposes, and in accordance with the Specifications in this Agreement. County may purchase additional services by amending this Agreement. Amendments to the Agreement will be deemed accepted by CONTRACTOR unless and until CONTRACTOR accepts such amendment to the Agreement in writing. Upon execution of the amendment to the Agreement acceptance and subject to County’s payment of the corresponding services fees, CONTRACTOR will make the services available to County. Any terms and conditions contained in any quote, invoice, purchase order or amendment that are inconsistent with the terms and conditions of this Agreement will be deemed stricken, unless expressly agreed to in writing by CONTRACTOR with explicit reference to the accepted terms and conditions. Upon acceptance of an amendment to the Agreement, it will become part of this Agreement. County will ensure that all its Authorized Users using the Services under its Account comply with all of County’s obligations under this Agreement, and County is responsible for their acts and omissions relating to the Agreement as though they were those of County.

2.2 Restrictions on Use. County shall not, and shall not permit others to, do the following with respect to the services:

2.2.1 Make the services available to anyone other than Authorized Users;

2.2.2 Use the services, or allow access to the services, in a manner that circumvents contractual usage restrictions or that exceeds County’s authorized use or usage metrics as set forth in this Agreement, including Exhibit A to this Agreement;

2.2.3 License, sub-license, sell re-sell, rent, lease, transfer, distribute or time share or otherwise make any portion of the services available for access by third parties except as otherwise expressly provided in this Agreement or with the express permission of CONTRACTOR;

2.2.4 Use the services in a way that (i) violates or infringes upon the rights of a third party, including those pertaining to: Agreement, 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 services for the purpose of developing or operating products or services intended to be offered to third parties in competition with the services or allow access by a direct competitor of services;

2.2.6 Obtain intellectual property rights to the use of any component of the services [inclusive of Application Programming Interface (APIs)];

2.2.7 Create derivative works based on the services;

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 services or technologies, other than copying or framing on County’s own intranets or otherwise for County’s internal business purposes in accordance with CONTRACTOR’s applicable documentation;

2.2.9 Interfere with or disrupt the integrity, operation, or performance of the Services or interfere with the use or enjoyment by others by, among other things, using the services 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 services or any host, network, or account related thereto or use any aspect of the services components other than those specifically identified in the Agreement, even if technically possible. CONTRACTOR assumes no responsibility for any fraudulent or unauthorized use of the Software or any portion of the services.

2.2.10 Use or allow the use of, the services by anyone located in, under the control of, or that is a national or resident of a United States (US) embargoed country or territory or by a prohibited end user under Export Control Laws (as defined in Section 12.3, Compliance with Laws).

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2.3 Data Usage and Storage. The services are 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 CONTRACTOR by County in blocks of five hundred gigabytes (500GB), with a price of one thousand dollars (\$1,000) per year. If the services are nearing expiration or are otherwise terminated, CONTRACTOR will initiate its data retention processes, including the deletion of County Data from systems directly controlled by CONTRACTOR. CONTRACTOR's Data Storage Policy can be accessed at: <https://acela.box.com/v/DataStoragePolicy> (which URL location and content may be updated from time to time by CONTRACTOR). This purchase is considered an "optional service" which shall not be provided unless authorized in writing via an executed amendment to the Agreement by the County prior to the purchase of the "optional service".

2.4 CONTRACTOR's Responsibilities. CONTRACTOR will: (i) make the services available to County pursuant to this Agreement and any applicable amendments; (ii) provide to County support related to the services in accordance with the CONTRACTOR Support Terms accessible at <https://acela.box.com/SaaSsupportPolicy> (which URL location and content may be updated from time to time by CONTRACTOR); and (iii) provide the services only in accordance with applicable laws and government regulations.

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

3. PAYMENT TERMS.

3.1 Invoicing and Payment. CONTRACTOR will invoice County in advance for the annual services. Service fees are due upon invoice and payable by County within thirty (30) days of receiving the certified invoice. Service fees will be due no later than the first day of each Subscription Period to which the payment relates. If County 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 service fee for such additional quantity will be pro-rated accordingly. Optional services will be due at the same time as payment for the corresponding services, or (if applicable) as otherwise specified in the applicable Agreement or amendment or governing terms. Service fees will be subject to an automatic annual increase by not more than seven percent (7%) of the prior year's service fees ("Uplift"). County is responsible for keeping CONTRACTOR accurately and fully informed of County's billing and contact information, including providing any Delivery Order (DO) numbers in advance of invoice issuance. Upon execution by the Parties, the Agreement and each of the amendments to the Agreement are non-cancellable and non-refundable except as provided in this Agreement.

3.2 Requirement for DO. CONTRACTOR has the right to issue an invoice and collect payment however, that if County's procurement procedure requires a DO number on a pertinent invoice, the DO is required to be provided to CONTRACTOR. If County issues a DO to CONTRACTOR, then DO shall be for the full amount set forth in the DO, and CONTRACTOR hereby rejects any additional or conflicting terms appearing in a DO or any other ordering materials submitted by County.

3.3 Suspension of Service. If any amount owing by County under this Agreement for any Subscription Services is ninety (90) days delinquent, CONTRACTOR may, in its sole discretion, temporarily cease providing County with Services and/or any pertinent support until past due amounts are paid in full.

3.4 Taxes. 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"). County is responsible for paying all Taxes. If CONTRACTOR has the legal obligation to pay or collect Taxes for which County is responsible under this paragraph, the appropriate amount will be invoiced to and paid by County directly to the jurisdiction, unless County provides CONTRACTOR with a valid tax exemption certificate

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

authorized by the appropriate taxing authority prior to invoice issuance. For clarity, CONTRACTOR is solely responsible for taxes assessable against CONTRACTOR based on CONTRACTOR's income, property and employees.

4. CONFIDENTIALITY

4.1 **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 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.

4.2 **Protection and Compelled Disclosure.** Except as otherwise permitted in writing by the Disclosing Party and subject to the other terms of this Agreement (including Accela, Inc.'s Privacy Policy, accessible at <https://accela.box.com/v/PrivacyPolicyv1>, attached as Exhibit B and incorporated as part of this Agreement, which may be updated from time to time by CONTRACTOR upon prior written notice to County, any such changes shall not materially diminish or denigrate the Service;

i. the Receiving Party shall 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 shall 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. Notwithstanding any of the above to the contrary, the Parties acknowledge that County is a California Public Agency subject to the Brown Act, California Government Code sections 54950 et seq., and Public Records Act, California Government Code section 6250 et seq., and that this Agreement and any future amendments hereto will be presented to the Monterey County Board of Supervisors at an open and public meeting for approval, and will be available to the Public for viewing and/or download on County's website and otherwise considered a Public record pursuant to California Government Code sections 6250 et seq. and 54957.5. Except as herein provided, County shall promptly notify CONTRACTOR in the event that any third party not bound by this Agreement requests or seeks to discover, pursuant to the California Public Records Act, subpoena, or other compulsory process, or otherwise, information or material concerning any CONTRACTOR products or services. Within the time period provided by law for responding to the request or discovery, CONTRACTOR shall inform County whether the requested documents, information, or materials constitute trade secrets (as defined under California law or is otherwise legally exempt from disclosure) ("Accela Protected Information"). If CONTRACTOR informs County that the requested documents, information, or materials constitute trade secrets (as defined under California law) or is otherwise legally exempt from disclosure, County shall not disclose the Accela Protected Information unless otherwise directed by a court of competent jurisdiction. CONTRACTOR shall indemnify, defend, and hold County harmless and, at County's request, CONTRACTOR shall provide counsel to appear and represent County at CONTRACTOR's sole cost and expense, in connection with any action or proceeding to compel inspection, access, disclosure, release, or other discovery of Accela Protected Information. Counsel for County in any such defense action or proceeding shall be selected by CONTRACTOR, subject to the approval of County, which approval shall not be unreasonably conditioned or withheld. CONTRACTOR's obligation to provide such defense includes the obligation to indemnify and hold harmless County, its officers, agents, and employees from and against any and all claims, costs, damages, judgments, awards (including any award of costs or attorney's fees), administrative orders, or payments in compromise and settlement, and including all direct and administrative costs, with respect to any such action or proceeding.

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

5. OWNERSHIP

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

5.2 County Data. County reserves all its rights, title and interest in and to the County Data. No rights are granted to CONTRACTOR hereunder with respect to the County Data, except that CONTRACTOR may (i) store, copy, process, and transmit such County Data for purposes of providing the services to County and (ii) otherwise utilize County Data if and as permitted by the CONTRACTOR's Privacy Policy.

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

6. WARRANTIES AND DISCLAIMERS

6.1 Specifications. Subject to the limitations set forth below, CONTRACTOR warrants that, during the Subscription Period, the services will operate in all material respects in accordance with the Specifications. As County's sole and exclusive remedy, excepting County's right to terminate this Agreement for cause pursuant to section 11.2, Termination or Suspension for Cause, and CONTRACTOR's entire liability for any breach of the foregoing warranty, CONTRACTOR shall use commercially reasonable efforts to modify the Subscription Service so that it conforms to foregoing warranty.

6.2 Service Level Commitment (SLC). During the Subscription Period, CONTRACTOR further warrants that the services will meet the performance level specified in Exhibit A. The SLC sets forth County's sole and exclusive remedy for CONTRACTOR's failure to achieve the stated services performance level.

6.3 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.

6.4 Disclaimers. Except as expressly provided herein, CONTRACTOR does not make any warranties of any kind, whether express, implied, statutory or otherwise, and CONTRACTOR 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. CONTRACTOR will not be responsible to the extent failure of the services to operate as warranted is caused by or results from: (i) any modification to the services other than a Supported Modification; (ii) combination, operation or use of the services with County's or a third party's applications, software or systems; (iii) abuse; willful misconduct or negligence by anyone other than CONTRACTOR or CONTRACTOR's designee; (iv) use of the services other than in accordance with the terms of this Agreement and/or the applicable Specifications and CONTRACTOR documentation or (v) any of the SLC Exclusions (as defined in the Subscription SLC).

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6.5 **Marijuana-Related Business.** CONTRACTOR is considered a software service provider to its customers and not a marijuana-related business or agent thereof. In addition to the foregoing, CONTRACTOR only retains service fees in accordance with Section 3, Payment Terms, of this Exhibit A from County, a government agency, and does not retain these fees from any type of end user.

6.5.1 It is the sole responsibility of County or end user to offer state law compliant services, which may be coordinated and facilitated through the use of the services.

6.5.2 CONTRACTOR 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 County by such third parties.

6.5.3 County expressly acknowledges and assumes full responsibility for cooperating with the laws of the state or country of its residency.

7. INDEMNIFICATION

7.1 **Indemnification by CONTRACTOR.** CONTRACTOR shall immediately indemnify, defend, and hold harmless (or at CONTRACTOR's option, settle) the County and its elected officials, officers, employees, and agents against any and all third-party claim, suit or action arising out of this Agreement, that the Services, as furnished by CONTRACTOR hereunder, infringes or misappropriates the Intellectual Property Rights of any third-party, and will pay any and all costs, damages and reasonable attorneys' fees. CONTRACTOR shall have no liability under this Section 7.1, Security and Other Risks, to the extent that any third-party claims described herein are determined to be solely caused by (i) any combination of the Services with products, services, methods, or other elements not furnished by CONTRACTOR; (ii) any use of the Services in a manner that violates this Agreement or the instructions given to County by CONTRACTOR; (iii) County's failure to incorporate updates or upgrades that would have avoided the alleged infringement; (iv) County's breach of this Agreement; and/or County's revisions of Services made without CONTRACTOR's written consent. THIS SECTION 7.1 STATES THE ENTIRE OBLIGATION OF CONTRACTOR AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICES.

7.2 **Indemnification Requirements.** In connection with any claim for indemnification under this Section 7, Limitations of Liability, 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.

7.3 **Mitigation Measures.** In the event that (i) any claim or potential claim covered by Section 7.1, Indemnification by CONTRACTOR, arises or (ii) CONTRACTOR's reasonable opinion is likely to be enjoined, CONTRACTOR shall, in its discretion, seek to mitigate the impact of such claim or Injunction by obtaining the right to continue providing the Services, by replacing or modifying the Services to make it non-infringing, and/or by suspending or terminating County's use of the Services with reasonable notice to County. In the case of a suspension or termination pursuant to this Section 7.3, CONTRACTOR shall refund to County a portion of fees prepaid by County for the then-current Subscription period, prorated (based on a 365 day year) to the portion of that Subscription period that is affected by the suspension or termination.

8. **LIMITATIONS OF LIABILITY.** NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OR INABILITY TO USE THE SERVICE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY COUNTY HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT. THIS LIMITATION DOES NOT APPLY TO CONTRACTOR'S DUTY TO INDEMNIFY COUNTY PURSUANT TO SECTION 4.2, PROTECTION AND COMPELLED DISCLOSURE, AND SECTION 7, INDEMNIFICATION, OF THIS AGREEMENT; NOR DOES IT APPLY TO CONTRACTOR'S BREACH OF WARRANTY PURSUANT TO SECTION 6.4, DISCLAIMERS, OF THIS AGREEMENT.

Exclusion of Damages. WITHOUT LIMITING OR OTHERWISE ALTERING CONTRACTOR'S DUTY TO INDEMNIFY PURSUANT TO SECTION 7, INDEMNIFICATION, OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY OR ANY OTHER PERSON OR ENTITY

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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.

8.1 Security and Other Risks. County acknowledges that, notwithstanding security features of the 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, Warranties and Disclaimers, of this Exhibit A, CONTRACTOR shall have no liability for any security breach caused by any such persons, entities, or technologies. County further acknowledges that the services are not guaranteed to operate without interruptions, failures, or errors. If County or Authorized Users use the services in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, County assumes any associated risks and will indemnify CONTRACTOR and hold CONTRACTOR harmless against those risks.

9. SECURITY AND PERSONAL DATA

9.1 Security. CONTRACTOR has implemented commercially viable and reasonable information security processes, policies, and technology safeguards to protect the confidentiality and integrity of County and personal data against reasonably anticipated threats. CONTRACTOR holds SSAE 16 /18 SOC 2, and PCI-DSS certifications (industry-wide security reporting standards) and leverages certified service providers who are vetted against industry standards such as ISO 27001 and SSAE 16 / 18 SOC 2 (industry-wide security reporting standards) in the provision of the services.

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

9.3 Use of Aggregate Data. County agrees that CONTRACTOR may collect, use, and disclose quantitative data derived from the use of the 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 County, its Authorized Users, or any third parties utilizing the services.

10. THIRD PARTY SERVICES

County may choose to obtain products or services that are provided or supported by third parties ("Third Party Services") for use with the services. Third-Party Services are provided pursuant to the terms of the applicable third-party license or separate agreement between the licensor or provider of the Third-Party Services and County, and CONTRACTOR assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any Third-Party Service. Further, CONTRACTOR will not be responsible to the extent failure of the services to operate as warranted are caused by or results from: (i) any modification to the Services other than a Supported Modification; (ii) combination, operation or use of the

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services with County's or Third-Party Services; (iii) abuse, willful misconduct or negligence by anyone other than CONTRACTOR or CONTRACTOR's designee; (iv) use of the services other than in accordance with the terms of this Agreement and/or the applicable Specifications and CONTRACTOR documentation or (v) any of the exclusions indicated in Exhibit A of this Agreement.

11. SUBSCRIPTION PERIOD AND TERMINATION

11.1 Term of Authorized User Subscriptions. Authorized User Subscriptions purchased by County commence on the start date specified in the Agreement 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 CONTRACTOR deems it appropriate to cause newly purchased Subscriptions to expire or renew simultaneously with County's pre-existing services to ensure new subscriptions are co-terminus with the existing subscription/s. Except as otherwise specified in the applicable services, all Subscriptions will automatically renew for an additional period of one (1) year, 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 Subscription Service Fee pricing increase not to exceed seven percent (7%) of the prior year's Subscription Service fees ("Uplift") as specified in Section 3.1 of this Agreement and as designated by CONTRACTOR and with notification to County. 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, County's right to use the services will terminate at the end of the relevant Subscription Period.

11.2 Termination or Suspension for Cause. County may terminate this Agreement in the event of reduced County funding with a sixty (60) day written notification to CONTRACTOR. A Party may terminate any services 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, CONTRACTOR may, at its sole option, suspend or terminate County's or any Authorized User's access to the services, or any portion thereof, immediately if CONTRACTOR, in its sole discretion: (i) suspects that any person other than County or an Authorized User is using or attempting to use County Data (ii) suspects that County or an Authorized User is using the services in a way that violates this Agreement and could expose CONTRACTOR 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 County's final Subscription Period, CONTRACTOR will provide a copy of County's data and associated documents in a machine readable format. CONTRACTOR will comply in a timely manner with such request; provided that, County pays any and all unpaid amounts due to CONTRACTOR; (ii) licenses and use rights granted to County with respect to services and intellectual property will immediately terminate; and (iii) CONTRACTOR's obligation to provide any further services to County 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, Survival, of this Exhibit A.

11.4 Survival. Sections: 4 (Confidentiality), 5 (Ownership and Proprietary Rights), 6.4 (Disclaimer), 8 (Limitation of Liability), 11.3 (Effect of Termination), 11.4 (Survival), and 12 (General) 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 County's normal business hours (or, if not, then on the next business day). Notices will be sent to the address specified by County in writing when entering into this Agreement or establishing County's account for the services (or such other address as the County may thereafter specify by notice given in accordance with this Section 12.1).

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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 services or this Agreement will be the state and federal courts located in the Northern District of California and each of the Parties hereto waive 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 US and other applicable jurisdictions. Without limiting the foregoing, County will not permit Authorized Users to access or use the services in violation of any US export embargo, prohibition or restriction. Further, in connections with the services performed under this Agreement and County's use of the services, the Parties agree to comply with all applicable anti-corruption and anti-bribery laws, statutes, and regulations.

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 shall 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. County may not assign or transfer this Agreement, whether by operation of law or otherwise, without the prior written consent of CONTRACTOR. 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 Force Majeure. CONTRACTOR 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 CONTRACTOR.

12.9 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.

Service Availability:

CONTRACTOR will use commercially reasonable efforts to (a) provide bandwidth sufficient for County's use of the services provided hereunder and in this Agreement and (b) operate and manage the services with a ninety-nine and one-half percent (99.5%) uptime goal (the "Availability Service Level Agreement" (SLA)), excluding situations identified as "Excluded" below.

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

- a. Any maintenance performed by CONTRACTOR during CONTRACTOR's standard maintenance windows. CONTRACTOR will notify County within forty-eight (48) hours of any standard maintenance and within twenty-

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four (24) hours for other non-standard emergency maintenance (collectively referred to herein as "Scheduled Maintenance").

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

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

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

d. Any window of time when County agrees that the services availability/unavailability will not be monitored or counted.

e. Any problems resulting from County combining or merging the services with any hardware or software not supplied by CONTRACTOR or not identified by CONTRACTOR in the Specifications as being compatible with the services.

f. Interruptions or delays in providing the services resulting from telecommunication or Internet service provider failures.

g. County's or any third party's use of the services in an unauthorized or unlawful manner.

Remedies for Excessive Downtime:

In the event the availability of the services falls below the Availability SLA in a given calendar month, CONTRACTOR will pay County 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 services during the applicable calendar month. Such Service Credit will be issued as a credit against any fees owed by County for the next calendar month of the Subscription Period or, if County does not owe any additional fees, then CONTRACTOR will pay County 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 County 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.

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(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%
90.0% - < 95.0%	10%
80.0% - < 90.0%	20%
70.0% - < 80.0%	30%
60.0% - < 70.0%	40%
< 50%	50%

County Account Login:

For CONTRACTOR user interface access, CONTRACTOR uses Transport Layer Security (TLS) 1.2 with Advanced Encryption Standard (AES) 256 bit or similar encryption for protection of data in transit, which is supported by most modern browsers. CONTRACTOR will also restrict applicable administrative user interface access to County corporate networks for additional security on written request by County.

Hosting:

CONTRACTOR's Subscription as a Service (SaaS) platform (servers, infrastructure and storage) for the services is and will remain hosted in one (1) 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. CONTRACTOR's data center provider is and will remain SSAE 16/18 SOC2 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. CONTRACTOR also provides an off-site backup service, which is available at an additional cost. Security patching and updates are actively evaluated by engineers and will be deployed based upon the security risks and stability benefits they offer to CONTRACTOR's SaaS platform and County. CONTRACTOR will attempt to provide County with reasonable prior notice to security changes, updates and patches, unless the delay will lead to a significant risk of impact to County data.

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Services Order Form

Services Year 1	Subscription Period		Order Term (months)	Unit Price	Quantity	Total Price
	Start Date	End Date				
Multi User	07/01/2019	06/30/2020	12	\$1,839.67	175.00	\$321,942.60
Total						\$321,942.60

Services Year 2	Subscription Period		Order Term (months)	Unit Price	Quantity	Total Price
	Start Date	End Date				
Multi User	07/01/2020	06/30/2021	12	\$1,904.06	175.00	\$333,210.59
Total						\$333,210.59

Services Year 3	Subscription Period		Order Term (months)	Unit Price	Quantity	Total Price
	Start Date	End Date				
Multi User	07/01/2021	06/30/2022	12	\$1,970.70	175.00	\$344,872.96
Total						\$344,872.96

Annual Pricing Summary

Fees	Total Price
Year 1 (07/01/19 – 06/30/20)	\$321,942.60
Year 2 (07/01/20 – 06/30/21)	\$333,210.59
Year 3 (07/01/21 – 06/30/22)	\$344,872.96
Grand Total	\$1,000,026.15

Additional Terms

1. All Software Licenses, Maintenance, and Subscription purchases are non-cancelable and non-refundable.



Accela, Inc.

Privacy Policy

Introduction

This Privacy Policy was updated on or about May 17, 2018.

Accela, Inc. and its affiliated companies and subsidiaries (collectively referred to as “Accela,” “we,” or “us”) respect your privacy. This Privacy Policy describes how we collect information from and about you, what we do with the information, how we share it, and how we handle the content you place in our products and services. It also explains the choices available to you regarding use of your Personal Information. By providing Content, Information or Personal Information to us including on our website or purchasing our products or services, or signing an agreement that incorporates this Privacy Policy by reference you agree to this Privacy Policy.

Scope of this Privacy Policy

This Privacy Policy applies to the information we obtain through your use of Accela’s products and services or visitation to Accela websites where this Privacy Policy is posted. It does not apply to any other information collected by Accela through other means. If you have agreements with Accela for Accela products and services, then those agreements control to the extent of any conflict. Further, this Privacy Policy does not cover the activities of third parties except as specifically stated.

Definitions

Content: any information or data that you upload, submit, post, create, transmit, store or display in an Accela product or service.

Downloadable Products: Accela’s downloadable software products and mobile applications, including bundles of code, resources, and configuration files that can be used with an Accela product to add new functionality (including product version upgrades) created by Accela that are installed by customers on a device of their choice.

Information: all forms of data, content, and information collected by us.

Personal Information: information that may be used to readily identify or contact you as an individual person, such as: name, address, email address or phone number. Personal Information does not include information that has been anonymized such that it does not allow for the ready identification of specific individuals.

Our Collection of Personal Information

Accela collects Personal Information from you at several different points, including but not limited to the following: when we correspond with you as a customer or prospective customer; when you use our products or services; when you visit, register, or otherwise provide us your Personal Information on our website; when you contact us for help; when you interact with our advertising and marketing content; and when you participate at our conferences, attend our webinars, or visit our tradeshow booths.



In using our products or services or requesting information, you may provide a password for your account, your real name, industry, agency name, job role and contact information. We may also collect other information including but not limited to the specific Accela product or service being used, the associated license identifier and domain name, the username and IP address of the individual using the product or service function; your credit card number and billing address when purchasing an Accela product or service; analytics information including aggregated usage data; and other additional information required to detail the operation of the Accela product or service.

Our Use of Your Information and Personal Information

Accela may use your information and personal information to:

- Deliver the products and services that you have requested, including software updates.
- Manage your customer relationship and provide you with customer support.
- Perform research and analysis about our customers' use of, or interest in, our products, services or content.
- Operate and improve our internal operations, systems, products and services including benchmarking system performance.
- Understand you and your preferences to enhance your experience.
- Respond to your comments and questions, and provide customer service.
- Send you service-related information, including confirmations, invoices, technical notices, updates, security alerts, and support and administrative messages.
- Deliver marketing communications.
- Enforce our terms and conditions.
- Recruit, onboard, and distribute payroll and benefits.
- Communicate with you about products or services that may be of interest to you.

Our Disclosure of Your Personal Information to Third Parties

We may share your personal information with third parties only in the ways that are described in this Privacy Policy:

- When we have your permission, including when you choose to share personal information including using Accela Community or post to our blogs.
- We may provide your personal information to our agents, partners, contractors, vendors or service providers who perform functions on our behalf.
- We may share your information with our current or future "affiliates" (which means a parent company, any subsidiaries, joint ventures, or other companies under common control), in which case we will require our affiliates to honor this Privacy Policy.
- We may disclose personal information to comply with laws or in response to legal process, for example, in response to a court order or a subpoena. We also may disclose personal information in response to a law enforcement agency's request, or where we believe it is necessary to investigate, verify, prevent, enforce compliance with, or take action regarding: illegal or suspected illegal activities; suspected fraud; situations involving potential threats to the physical safety of any person; protection of the rights and property of Accela, our agents, customers or others; or violations or suspected violations of our agreements, policies or end user license



agreements; or as otherwise required or permitted by law, or consistent with legal requirements. We reserve the right to transfer or disclose Personal Information in our system relating to or during negotiation of any merger, financing, acquisition, bankruptcy, dissolution, transaction or other proceeding involving sale, transfer, divestiture or assignment of all or a portion of our business or assets to a different entity.

- ◆ Finally, we may also share aggregated, anonymized or statistical information about you, including demographics data, with others for a variety of purposes, including for their own uses, for example, for improving their products and services for Accela and others.

Our Security Measures to Protect your Personal Information

We have put in place reasonable and appropriate physical, electronic, and managerial procedures in an effort to help safeguard Personal Information we collect. However, Accela cannot fully eliminate security risks associated with Personal Information. To help protect yourself, please use a strong password, do not use the same passwords you use with other accounts or services, and protect your usernames and passwords.

End Customer Data

Accela's customer may electronically submit information to the product or service for processing and storage purposes ("End Customer Data"). We may access or process End Customer Data only for the purpose of providing the product or service or preventing or addressing service or technical problems or as may be required by law. If your Personal Information has been submitted to us by an Accela customer and you wish to exercise any rights you may have to access, correct, amend, or delete such data, please inquire with the relevant customer directly. Since Accela personnel have limited ability to access information our customers submit to our products or services, if you wish to make your request directly to Accela, please provide the name of the Accela customer who submitted your data to our product or service. We will refer your request to that customer.

Our Retention of your Personal Information

Personal Information will be retained as long as needed to fulfill legitimate business purposes for which it was collected, including the purposes outlined in this Privacy Policy, or for a period of time specifically required or allowed by applicable regulations or laws. We will also retain and use your Personal Information for as long as necessary to comply with our legal obligations, resolve disputes and enforce our agreements.

Cookies/Web Beacons

When you use our websites, you can usually choose to set your browser to remove cookies and to reject cookies from our servers. If you choose to remove or reject cookies, this could affect certain features or services of our websites. Cookie management tools provided by your browser may not remove Flash cookies. To learn how to manage privacy and storage settings for Flash cookies, go to:

http://www.macromedia.com/support/documentation/en/flashplayer/help/settings_manager.html#117118 (or in the EU YourOnlineChoices.com).



You can also choose to opt-out of use of cookies by many of our third party advertising partners for delivery of personalized ads by visiting the Digital Advertising Alliance (<http://www.aboutads.info/choices/>) in the USA, Digital Advertising Alliance of Canada (<http://youradchoices.ca/>) in Canada or the European Digital Advertising Alliance (<http://www.youronlinechoices.eu/>) in Europe.

While we and others give you certain choices, as further outlined in this Privacy Policy, there are many ways that web browser signals and similar mechanisms can indicate your choice to disable tracking, and we may not be aware of nor honor every mechanism.

International Storage and Transfer of your Personal Information

Accela is a global company with affiliates, various business processes, management structures and technical systems that cross borders. Information collected by Accela or on behalf of may be stored on our computers, on our mobile devices, or on our servers, and may be transferred to, accessed from, or stored and processed in the United States and other countries including but not limited to Ireland, United Arab Emirates, Australia, New Zealand, Canada and any other country where Accela or its service providers maintain facilities or support centers.

Your Access to and Amendment of your Personal Information

Our marketing emails tell you how to "opt-out" of receiving further marketing emails. If you opt out, we may still send you non-marketing emails including emails about your accounts and our business dealings with you.

We allow you to access your Personal Information (with proper identification verification), and allow you to correct, amend or delete inaccurate Personal Information, except where the burden or expense of providing such an access is disproportionate to the individual privacy risk, or where the rights of persons other than the requesting individual risk being violated. This information request can be made by sending an email to legal@accela.com.

Children's Privacy

Because of the nature of our business, our services are not designed to appeal to minors. We do not knowingly attempt to solicit or receive any information from anyone under the age of 13. If you are a parent or guardian and you are aware that your child has provided us with Personal Information, please contact us immediately.

Changes to This Privacy Policy

From time to time, we may collect and use Personal Information in ways not previously disclosed in our Privacy Policy. If our information practices or this policy change, we will post adjustments to this policy and change the "Last Updated" date. Unless additional notice or consent is required by applicable laws, this will serve as your notification of these changes.

Contacting Us

If you have questions or suggestions, please email Accela at legal@accela.com. Please send all written communication to:



Accela, Inc.
Attn: General Counsel
2633 Camino Ramon, Suite 500
Bishop Ranch 3
San Ramon, California 94583, United States

EXHIBIT C – MODIFICATION TO AGREEMENT PROVISIONS

Section 15.0, MISCELLANEOUS PROVISIONS. Replace Paragraph 15.06 with the following:

- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County, other than in connection with a merger, acquisition or change of control transaction. Notwithstanding any subcontracting of its services hereunder, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

Liability Insurance

Endorsement

Policy Period 9/1/2018 TO 9/1/2019

Effective Date 9/1/2018

Policy Number 3604-91-08

Insured Accela, Inc.

Name of Company FEDERAL INSURANCE COMPANY

Date Issued 2/14/2019

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added.

Who Is An Insured

Additional Insured - Scheduled Person Or Organization

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).
- with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.

Liability Endorsement

(continued)

Under Conditions, the following provision is added to the condition titled Other Insurance.

Conditions

**Other Insurance –
Primary, Noncontributory
Insurance – Scheduled
Person Or Organization**

If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

Persons or organizations that you are obligated, pursuant to a contract or agreement, to provide with such insurance as is afforded by this policy.

All other terms and conditions remain unchanged.

Authorized Representative



COMMERCIAL AUTOMOBILE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

This endorsement modifies the Business Auto Coverage Form.

1. EXTENDED CANCELLATION CONDITION

Paragraph A.2.b. – CANCELLATION – of the COMMON POLICY CONDITIONS form IL 00 17 is deleted and replaced with the following:

- b. 60 days before the effective date of cancellation if we cancel for any other reason.

2. BROAD FORM INSURED**A. Subsidiaries and Newly Acquired or Formed Organizations As Insureds**

The Named Insured shown in the Declarations is amended to include:

1. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
2. Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
 - (a) That is an "insured" under any other automobile policy;
 - (b) That has exhausted its Limit of Insurance under any other policy; or
 - (c) 180 days or more after its acquisition or formation by you, unless you have given us written notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. – WHO IS AN INSURED – of SECTION II – LIABILITY COVERAGE is amended to add the following:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or

borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. – WHO IS AN INSURED – of SECTION II – LIABILITY COVERAGE is amended to add the following:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
- (1) The agreement requires you to provide direct primary insurance for the lessor; and
 - (2) The "auto" is leased without a driver. Such leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.
- However, the lessor is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions by:
1. You;
 2. Any of your "employees" or agents; or
 3. Any person, except the lessor or any "employee" or agent of the lessor, operating an "auto" with the permission of any of 1. and/or 2. above.

D. Persons And Organizations As Insureds Under A Written Insured Contract

Paragraph A.1 – WHO IS AN INSURED – of SECTION II – LIABILITY COVERAGE is amended to add the following:

- f. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed under an express provision in a written "insured contract", written agreement or a written permit issued to you by a governmental or public authority to add such person or organization to this policy as an "insured". However, such person or organization is an "insured" only:

- (1) with respect to the operation, maintenance or use of a covered "auto"; and
- (2) for "bodily injury" or "property damage" caused by an "accident" which takes place after:
 - (a) You executed the "insured contract" or written agreement; or
 - (b) The permit has been issued to you.

3. FELLOW EMPLOYEE COVERAGE

EXCLUSION B.5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply.

4. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. - TRANSPORTATION EXPENSES - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day for temporary transportation expense, subject to a maximum limit of \$1,000.

5. AUTO LOAN/LEASE GAP COVERAGE

Paragraph A. 4. - COVERAGE EXTENSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to add the following:

c. Unpaid Loan or Lease Amounts

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the loan or lease for a covered "auto" minus:

1. The amount paid under the Physical Damage Coverage Section of the policy; and
2. Any:
 - a. Overdue loan/lease payments at the time of the "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - c. Security deposits not returned by the lessor;
 - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
 - e. Carry-over balances from previous loans or leases.

We will pay for any unpaid amount due on the loan or lease if caused by:

1. Other than Collision Coverage only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
2. Specified Causes of Loss Coverage only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered "auto"; or
3. Collision Coverage only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

6. RENTAL AGENCY EXPENSE

Paragraph A. 4. - COVERAGE EXTENSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to add the following:

d. Rental Expense

We will pay the following expenses that you or any of your "employees" are legally obligated to pay because of a written contract or agreement entered into for use of a rental vehicle in the conduct of your business:

MAXIMUM WE WILL PAY FOR ANY ONE CONTRACT OR AGREEMENT:

1. \$2,500 for loss of income incurred by the rental agency during the period of time that vehicle is out of use because of actual damage to, or "loss" of, that vehicle, including income lost due to absence of that vehicle for use as a replacement;
 2. \$2,500 for decrease in trade-in value of the rental vehicle because of actual damage to that vehicle arising out of a covered "loss"; and
 3. \$2,500 for administrative expenses incurred by the rental agency, as stated in the contract or agreement.
 4. \$7,500 maximum total amount for paragraphs 1., 2. and 3. combined.
- 7. EXTRA EXPENSE - BROADENED COVERAGE**
Paragraph A.4. - COVERAGE EXTENSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to add the following:

e. Recovery Expense

We will pay for the expense of returning a stolen covered "auto" to you.

8. AIRBAG COVERAGE

Paragraph B.3.a. - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE does not apply to the accidental or unintended discharge of an airbag. Coverage is excess over any other collectible insurance or warranty specifically designed to provide this coverage.

9. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT - BROADENED COVERAGE

Paragraph C.1.b. - LIMIT OF INSURANCE - of SECTION III - PHYSICAL DAMAGE is deleted and replaced with the following:

- b. \$2,000 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:
 - (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
 - (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
 - (3) An integral part of such equipment.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE – of SECTION III – PHYSICAL DAMAGE COVERAGE the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Paragraph D.- DEDUCTIBLE – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

If this Coverage Form and any other Coverage Form or policy issued to you by us that is not an automobile policy or Coverage Form applies to the same "accident", the following applies:

1. If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

Paragraph A.2.a. - DUTIES IN THE EVENT OF AN ACCIDENT, CLAIM, SUIT OR LOSS of SECTION IV - BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

- a. In the event of "accident", claim, "suit" or "loss", you must promptly notify us when the "accident" is known to:
 - (1) You or your authorized representative, if you are an individual;
 - (2) A partner, or any authorized representative, if you are a partnership;
 - (3) A member, if you are a limited liability company; or
 - (4) An executive officer, Insurance manager, or authorized representative, if you are an organization other than a partnership or limited liability company.

Knowledge of an "accident", claim, "suit" or "loss" by other persons does not imply that the persons listed above have such knowledge. Notice to us should include:

- (1) How, when and where the "accident" or "loss" occurred;
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons or witnesses.

13. WAIVER OF SUBROGATION

Paragraph A.5. - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US of SECTION IV – BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

5. We will waive the right of recovery we would otherwise have against another person or organization for "loss" to which this insurance applies, provided the "insured" has waived

their rights of recovery against such person or organization under a contract or agreement that is entered into before such "loss".

To the extent that the "insured's" rights to recover damages for all or part of any payment made under this insurance has not been waived, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Paragraph B.2. – CONCEALMENT, MISREPRESENTATION or FRAUD of SECTION IV – BUSINESS AUTO CONDITIONS - is deleted and replaced with the following:

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not void coverage under this Coverage Form because of such failure.

15. AUTOS RENTED BY EMPLOYEES

Paragraph B.5. - OTHER INSURANCE of SECTION IV – BUSINESS AUTO CONDITIONS - is amended to add the following:

- e. Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire. If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

16. HIRED AUTO – COVERAGE TERRITORY

Paragraph B.7.b.(5). - POLICY PERIOD, COVERAGE TERRITORY of SECTION IV – BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

- (5) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 45 days or less; and

17. RESULTANT MENTAL ANGUISH COVERAGE

Paragraph C. of - SECTION V – DEFINITIONS is deleted and replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death as a result of the "bodily injury" sustained by that person.

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