

## ACCELA MASTER SOFTWARE AS A SERVICE (SaaS) AGREEMENT

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

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

### 1. DEFINITIONS

1.1 "Account" means a unique account established by Customer to enable its Authorized Users to access and use the Subscription Services.

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

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

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

1.5 "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 Subscription Service that may be available for purchase either directly from Accela or through an authorized reseller or partner of Accela, as more particularly described or identified in the applicable Order Form.

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

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

- 2.2.5. access or use the Subscription Services for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Subscription Services or allow access by a direct competitor of Subscription Services;
- 2.2.6. obtain intellectual property rights to the use of any component of the Subscription Services (inclusive of APIs);
- 2.2.7. Create derivative works based on the Subscription Service;
- 2.2.8. reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the Subscription Services or technologies, other than copying or framing on Customer's own intranets or otherwise for Customer's internal business purposes in accordance with Accela's applicable documentation;
- 2.2.9. interfere with or disrupt the integrity, operation, or performance of the Subscription Services or interfere with the use or enjoyment of it by others by, among other things, using it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs or circumvent or disclose the user authentication or security of the Subscription Services or any host, network, or account related thereto or use any aspect of the Subscription Service components other than those specifically identified in an Order Form, even if technically possible. Accela assumes no responsibility for any fraudulent or unauthorized use of the Software or any portion of the Subscription Services.
- 2.2.10. Use or allow the use of, the Subscription Services by anyone located in, under the control of, or that is a national or resident of a U.S. embargoed country or territory or by a prohibited end user under Export Control Laws (as defined in Section 12.3)

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

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

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

### 3. PAYMENT TERMS.

3.1. Invoicing and Payment. Accela will invoice Customer in advance for the Subscription Service. Subscription Service fees are due upon invoice and payable within thirty (30) days of the invoice date. Subscription Service fees will be due no later than the first day of each Subscription Period to which the payment relates. If Customer orders additional Authorized User quantities part-way through an existing Subscription Period, and

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. Except as otherwise permitted in writing by the Disclosing Party and subject to the other terms of this Agreement (including Accela's Privacy Policy, accessible at <https://accela.box.com/v/PrivacyPolicyv1>, which URL and its content may be updated from time to time by Accela), (i) the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are legally bound to protect such Confidential Information consistent with this Agreement.

4.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest, limit, or protect the disclosure.

## **5. OWNERSHIP**

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

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

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

## **6. WARRANTIES AND DISCLAIMERS**

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

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

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

THE ENTIRE OBLIGATION OF ACCELA AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE.

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

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

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

Exclusion of Damages. EXCEPT FOR LIABILITY ARISING OUT OF (i) CUSTOMER'S BREACH OF SECTION 2.2 (RESTRICTIONS) OR (ii) EITHER PARTY'S BREACH OF ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 8, (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY OR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SUBSCRIPTION SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTHING IN THIS AGREEMENT EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE.

8.1. Security and Other Risks. Customer acknowledges that, notwithstanding security features of the Subscription Service, no product, hardware, software or service can provide a completely secure mechanism of electronic transmission or communication and that there are persons and entities, including enterprises, governments and quasi-governmental actors, as well as technologies, that may attempt to breach any electronic security measure. Subject only to its limited warranty obligations set forth in Section 7, Accela will have no liability for any security breach caused by any such persons, entities, or technologies. Customer further acknowledges that the Subscription Service is not guaranteed to operate without interruptions, failures, or errors. If Customer or Authorized Users use the Subscription Service in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, Customer assumes any associated risks and will indemnify Accela and hold it harmless against those risks.

subject to annual pricing increase as designated by Accela and notified to Customer. Pricing increases will be effective upon renewal of the Subscription Period and annually thereafter, unless otherwise agreed to by the parties. If either party provides notice of non-renewal as set forth above, Customer's right to use the Subscription Service will terminate at the end of the relevant Subscription Period.

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

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

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

## 12. GENERAL

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

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

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



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

#### Remedies for Excessive Downtime:

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

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

#### Notes:

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

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

#### Customer Account Login:

For Accela user interface access, Accela uses TLS 1.2 with AES 256 bit or similar encryption for protection of data in transit, which is supported by most modern browsers. Accela will also restrict applicable administrative user interface access to Customer corporate networks for additional security on written request by Customer.

#### Hosting:

Accela's SaaS platform (servers, infrastructure and storage) for the Subscription Services is and will remain hosted in one of the largest Tier III data centers in North America, specifically designed and constructed to deliver world-class physical security, power availability, infrastructure flexibility and growth capacity. Accela's data center provider is and will remain 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. Accela 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

**EXHIBIT B**  
**Order Form**

**Software and Services**

Annual Subscriptions					
Product Code	Product Name	Description	Qty	Sales Price	Total Price
PLEASE COMPLETE	PLEASE COMPLETE	PLEASE COMPLETE	PLEASE COMPLETE	PLEASE COMPLETE	PLEASE COMPLETE

**Grand Total:**





2633 Camino Ramon, Suite 500  
San Ramon, CA 94583

Proposed by: Becky O'Brien  
Contact Phone: (925) 359-3334  
Contact Email: robrien@accela.com  
Quote ID: Q-14647  
Valid Through: 09/19/2019  
Currency: USD

## RENEWAL ORDER FORM

### Address Information

**Bill To:**

City of Santa Clara  
1500 Warburton Ave.  
Santa Clara, California, 95050  
United States

**Ship To:**

City of Santa Clara  
1500 Warburton Ave.  
Santa Clara, California, 95050  
United States

Billing Contact: Vonna Gissler  
Billing Phone: (408) 615-5537  
Billing Email Address: vgissler@santaclaraca.gov

### Services

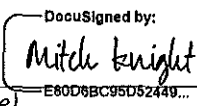

Services	Start Date	End Date	Term (Mths)	Unit Price	Quantity	Total Price
PublicStuff Pro	11/10/2019	11/09/2020	12	\$19,530.86	1.00	\$19,530.86
Lucity Integration	11/10/2019	11/09/2020	12	\$2,621.59	1.00	\$2,621.59
Active Directory Integration	11/10/2019	11/09/2020	12	\$655.40	1.00	\$655.40
Accela CRM - Interface - ESRI/GIS	11/10/2019	11/09/2020	12	\$3,434.70	1.00	\$3,434.70
					Total	\$26,242.55

### Terms / Information

General Information	
Governing Agreement(s)	This Order Form is governed by the applicable terms found at: <a href="https://accela.box.com/v/AccelaTerms">https://accela.box.com/v/AccelaTerms</a> .

Order Terms	
Order Start Date	Unless otherwise specified in the Special Order Terms: <ul style="list-style-type: none"> <li>• Software Licenses &amp; Subscriptions start on the date of delivery by Accela;</li> <li>• Hosting and Support start on Accela's delivery of the software hosted and/or supported;</li> </ul>
Order Duration	Unless otherwise specified in the Special Order Terms: <ul style="list-style-type: none"> <li>• Subscriptions continue from the Order Start Date through the number of months listed in this Order Form (or if not listed, twelve (12) months). Thereafter Subscriptions automatically renew annually as calculated from Order Start Date of Customer's first Subscription purchase.</li> <li>• Any Software Licenses or Hardware are one-time, non-refundable purchases.</li> <li>• Hosting and Support continue from the Order Start Date through the number of months listed in this Order Form (or if not listed, twelve (12) months).</li> <li>• Professional Services continue for the duration as outlined in the applicable Statement of Work, Exhibit or the Governing Agreement, as applicable.</li> </ul>
Special Order Terms	This Order Form replaces all previous order forms for the terms listed above and will govern the Software, Maintenance, and/or Services items listed on Page 2 of this Order Form. <ul style="list-style-type: none"> <li>• In the event of an inconsistency between this Order Form, any governing agreement, purchase order, or invoice, the Order Form shall govern as it pertains to this transaction.</li> <li>• For Software Licenses, Accela may terminate this Order Form in the event the Software is phased out across Accela's customer base. In such event, Accela will provide Customer sufficient advance notice and the parties will mutually agree to a migration plan for converting Customer to another Accela generally-available offering with comparable functionality.</li> </ul>

Payment Terms		
Currency	USD	
Invoice Date	Unless otherwise stated in the Special Payment Terms, Invoice for the Grand Total \$ above will be issued on the Order Start Date.	
Payment Due Date	Unless otherwise stated in the Special Payment Terms or the Governing Agreement(s), all payments are due on the Invoice Date and payable <b>net 30 days</b> .	
Special Payment Terms	None unless otherwise specified in this section.	
Purchase Order	If Customer requires PO number on invoices, it <b>must</b> be provided to the right and Customer <b>must</b> provide a copy of the PO prior to invoice issuance. If no PO number provided prior to invoice issuance date, invoices issued on this Order Form will be valid without a PO reference.	PO#

Accela	Customer
By:  (Signature) E80D6BC95D52449...	By:  F012 (Signature)
Mitch Knight (Print Name)	Deanna J. Santana (Print Name)
Its: VP of Sales (Title)	Its: City Manager (Title) City of Santa Clara, CA
Dated: 9/23/2019 (Month, Day, Year)	Dated: 9-17-19 (Month, Day, Year)

**APPROVED AS TO FORM:  
SANTA CLARA CITY ATTORNEY'S OFFICE**

  
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