



Please complete the information highlighted in yellow below.

Date	10/1/15
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Order form valid for 30 days after Date of delivery.

Accela CRM Order Schedule (OS) Confirmation

General Information

Client Name	City of Margate, FL
Client Contact	James Wilber
Client Contact Email	itdirector@margatefl.com

Accounts Payable Information

Accounts payable contact will receive invoice via email. Please enter their information below:

AP Contact AP Address	
AP Contact Email	

Agreement Term

Invoices will be sent out using the term start and end dates below:

Original Term: 10/15/14 – 10/14/15

Renewal year #1

Term Start	10/15/15
Term End	12/14/15

Terms and Conditions: Version 09222015

Accela, Inc.

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Description of Services

Accela, Inc. (“Accela”) will provide Client with access to Accela’s citizen engagement & workflow management suite (the “Services”), which includes the following:

- Custom branded smartphone applications
- Public-facing web portal
- Cloud-based CRM and administrative dashboard

	Mobile and CRM	Mobile App Only	
Staff User Accounts	X	X	50 users
Mobile Application	X	X	City branded in-app store application for iOS & Android, with Unlimited widgets. General Blackberry & Windows app.
Mapping Features (Public Facing Web Portal)	X		Google (standard)
Mapping features (City Facing CRM/Administrative Dashboard)	X		Google +ESRI Enhanced
Mapping Features (Mobile)	X		Google (Android) and iOS (Apple)
Local Places Module	X	X	Mobile widget and CRM configuration tools to feature local business, community attractions, and more.
Reporting	X		Enhanced reporting with analytics
System Configuration	X	X	Remote, account manager assisted
Training	X	X	Remote, account manager assisted

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Products & Pricing Conditions

Product Pricing

Product Code/SKU#	Product	Quantity	Billing Frequency	Price
SS65APSTT020001	Accela Public Stuff CRM Tier 2 15K - 100K population (Formerly Public Stuff Mobile and Pro)	1	Annual	\$5,000.00
	Knowledge Base (as included in initial term)	1	Annual	Included in renewal year #1 at no charge
Total Annual Subscription Fees Pro-Rated (10/15/15 – 12/14/2015)				\$833.34*

The costs of Implementation Services for Accela PublicStuff CRM are included in the subscription fees. Additional professional services outside the scope of this agreement may be subject to additional fees on a time and materials basis. A separate Estimate and Statement of Work can be provided for 3rd party product integrations. Payment terms are net 30.

Acceptance & Authorization

This Order Schedule ("OS") is entered into between Client and Accela. Client accepts and agrees to adhere to the Terms and Conditions for Accela Services attached hereto as Exhibit A, which, together with this OS will be referenced as the "Agreement." This Agreement between Client and Accela, which Client hereby acknowledges and accepts, constitutes the entire agreement between Accela and Client governing the Services referenced above. Client represents that its signatory below has the authority to bind Client to the terms of this Agreement. Additionally, Client hereby consents to extend to other municipalities the terms, with the exclusion of pricing, of this Agreement for use in inter-governmental cooperative purchasing ("Piggybacking").

Accela, Inc.	Client: City of Margate
By:	By:
Printed Name:	Printed Name:
Title:	Title
Date:	Date:

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Exhibit A (Terms and Conditions)

Terms and Conditions for Accela CRM Services

These terms and conditions for services ("agreement") and one or more written orders ("order schedules") govern use of our services.

If you are entering into this agreement on behalf of a municipality or other legal or governmental entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this agreement and may not use the services. You are entering into this agreement with Accela, Inc., a California corporation ("Accela", "we", "us" or "ours").

Accela provides a tool that You can use to understand issues surfaced by users of the Accela applications in respect of Your city, municipality, facility, complex, building or campus. By subscribing to the Accela Service, Accela allows You to interact directly with individuals in Your location by providing such individuals with tools and applications to report issues, concerns or problems to You for efficient resolution. The Accela Services are made available to You through a password-protected hosted interface and dashboard provided by Accela.

This Agreement and the applicable Order Schedules (incorporated herein by reference) are effective between You and Accela as of the date that You accept these Terms and Conditions.

1. DEFINITIONS

- "Implementation Services" means services provided to You to integrate and implement the Accela Services, as may be mutually agreed upon by the parties.
- "Platform" means all ideas, concepts, inventions, systems, platforms, software, dashboards, interfaces, tools, utilities, templates, forms, techniques, methods, processes, algorithms, know-how, trade secrets and other technologies, implementations and information that are used by Accela in providing the Accela Services.
- "Accela Data" means all data and information created, received, processed or provided by Accela in performing the Accela Services, or that result from performance of the Accela Services.
- "Accela Services" means, collectively, the interface and dashboard hosted by Accela and provided to You from time to time, the Accela Data, the Platform, the Implementation Services and the documentation. The Accela Services include any change, improvement, extension or other new version thereof that is developed or otherwise made available to You.
- "Third-Party Applications" means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Accela Services, and are identified as third-party applications.
- "User Guide" means the online user guide for the Services, accessible via login at accounts.publicstuff.com as updated from time to time.
- "Users" means individuals who are authorized by You to use the Accela Services and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents.
- "You" or "Your" means the Municipality or other legal or governmental entity for which you are accepting this Agreement.
- "Your Data" means all electronic data or information submitted by You to the Accela Services.

2. ACCELA SERVICES

2.1 Order Schedules

These Terms and Conditions will be implemented through one or more written orders that reference this Agreement and contain such other information as Your contact information, the Accela Services to be accessed, any third-party applications to be accessed, subscription fees, implementation services, the term and agreed-upon termination provisions. Any change to the terms of this Agreement within an Order Schedule will apply only to the Accela Service described therein. Accela may provide the Accela Services directly, or indirectly using contractors or other third party vendors or service providers. Accela agrees that it shall be fully responsible for performance of Accela Services for You by any such third party contractors, vendors or service providers.

2.2 Accela Services

Subject to these terms and conditions and the Order Schedules, Accela will use commercially reasonable efforts to operate and host the Platform in connection with making the Accela Services available to Customer in accordance with the service levels which can be accessed on our website at <http://www.publicstuff.com/terms> as amended, from time to time. Accela reserves the right to modify the Accela Services (in whole or in part) at any time, provided that Accela will not materially reduce the functionality of the Accela Services.

2.3 Analytics

Accela hereby grants You all necessary rights to access and analyze Accela Data, solely via the Accela Services during the term defined in the applicable Order Schedule.

2.4 Third-Party Products and Services

Accela may offer Third-Party Applications for sale under Order Schedules. Any other acquisition by You of Third-Party Applications, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. Accela does not warrant or support third-party products or services, except as specified in an Order Schedule. No purchase of third-party products or services is required to use the Accela Services.

2.5 Third-Party Applications and Customer Content

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If You install or enable Third-Party Applications for use with the Accela Services, You acknowledge that Accela may allow providers of those Third-Party Applications to access Your content as required for the interoperation of such Third-Party Applications with the Accela Services. Accela shall not be responsible for any disclosure, modification or deletion of Your content resulting from any such access by Third-Party Application providers.

2.6 Availability of Third Party Applications

Accela Service features that interoperate with Third Party Applications depend on the continuing availability of such Third Party Applications. If such Third Party Applications cease to be available on reasonable terms for inclusion in the Accela Services, Accela may cease providing such Third Party Applications without entitling You to any refund, credit, or other compensation.

2.7 Support

Accela will use commercially reasonable efforts to provide You with the necessary technical support and updates for the Accela Services.

2.8 Limitations

Accela will not be responsible or liable for any failure in the Accela Services resulting from or attributable to (a) usage in excess of the usage for which You have ordered pursuant to an applicable Order Schedule, (b) failures in any telecommunications, network or other service or equipment that are not within Accela's reasonable control, (c) Your negligence, acts or omissions, (d) any force majeure or other cause beyond Accela's reasonable control, or (e) unauthorized access, breach of firewalls or other hacking by third parties, except to the extent such access, breach or hacking is caused by Accela's negligence or willful misconduct.

2.9 Privacy

Accela shall collect, process and store personally identifiable information in accordance with Accela's privacy policy located at <http://www.publicstuff.com/privacy>.

2.10 User Subscriptions

Unless otherwise specified in the applicable Order Confirmation, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users.

3. FEES AND PAYMENTS

3.1 Fees

You agree to pay Accela all fees and expenses in the amounts and at the times specified in the applicable Order Schedule.

3.2 Payment Terms

Unless specified otherwise or subject to a good faith dispute, all amounts due hereunder shall be paid in full (without deduction, set-off or counterclaim) within 30 days after Your receipt of invoice in US dollars at Accela's address or to an account specified by Accela.

3.3 Overdue Charges

If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Order Confirmations on payment terms shorter than those specified above.

3.4 Suspension of Service and Acceleration

If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full.

4. PROPRIETARY RIGHTS

4.1 Accela Services

Except for the limited rights and licenses expressly granted to You hereunder, no other license is granted, no other use is permitted and Accela (and its licensors) shall retain all rights, title and interests (including all intellectual property and proprietary rights) in and to the Accela Services.

4.2 Customer Content

You shall own all rights in all content and data created or provided by You, subject to the rights and licenses granted herein. During the term of this Agreement, You hereby grant Accela and its successors a worldwide royalty-free, nonexclusive, sub-licensable right and license to exploit and use Your content in connection with the provision or exploitation of the Accela Services.

4.3 Restrictions

Except as expressly permitted in this Agreement, You shall not directly or indirectly (a) use any of Accela's Confidential Information (as defined herein) to create any service, software, documentation or data that is similar to any aspect of the Accela Services, provided that the foregoing does not prohibit independent development of similar functionality by You or third parties, (b) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code of the Platform, or the underlying ideas, algorithms or trade secrets therein, (c)

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encumber, sublicense, transfer, rent, lease, time-share or use the Accela Services in any service bureau arrangement or otherwise for the benefit of any third party, (d) copy, distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify any aspect of the Accela Services, (e) use or allow the transmission, transfer, export, re-export or other transfer of any product, technology or information You obtain or learn pursuant to this Agreement (or any direct product thereof) in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction or (f) permit any third party to engage in any of the foregoing proscribed acts.

5. CONFIDENTIALITY

Each party agrees that the business, technical and financial information, that is designated in writing as confidential, or is disclosed in a manner that a reasonable person would understand the confidentiality of the information disclosed, shall be the confidential property of the disclosing party and its licensors ("Confidential Information"). Confidential Information does not include information that (a) is previously rightfully known to the receiving party without restriction on disclosure, (b) is or becomes known to the general public, through no act or omission on the part of the receiving party, (c) is disclosed to the receiving party by a third party without breach of any separate nondisclosure obligation, or (d) is independently developed by the receiving party. Except as expressly and unambiguously allowed herein, the receiving party will hold in confidence and not use or disclose any Confidential Information and shall similarly bind its employees, consultants, and independent contractors. Upon the expiration or termination of this Agreement, all of the Confidential Information (including any copies) will be returned to the disclosing party, and receiving party will make no further use of such materials. If required by law, the receiving party may disclose Confidential Information of the disclosing party, but will give adequate prior notice of such disclosure to the disclosing party to permit the disclosing party to intervene and to request protective orders or other confidential treatment therefor.

6. LIMITED WARRANTY AND DISCLAIMERS

6.1 General

Each party represents and warrants that: (a) it is a duly organized and validly existing under the laws of the jurisdiction in which it is organized; (b) it has full power and authority, and has obtained all approvals, permissions and consents necessary, to enter into this Agreement and to perform its obligations hereunder; (c) this Agreement is legally binding upon it and enforceable in accordance with its terms; and (d) the execution, delivery and performance of this Agreement does not and will not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound.

6.2 Accela

Accela warrants to Customer that (i) the Accela Services will be provided in a professional and workmanlike manner; (ii) the Accela Services will perform in accordance with the documentation in all material respects; (iii) the Accela Services as delivered by Accela do not contain any Trojan horses, worms, or undocumented disabling devices; and (iv) Accela scans the Accela Services and the hosted environment for known viruses using industry standard virus detection techniques.

6.3 Disclaimers

ACCELA DOES NOT WARRANT THAT THE ACCELA SERVICES WILL MEET YOUR REQUIREMENTS OR RESULT IN ANY OUTCOME, OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, ACCELA HEREBY DISCLAIMS (FOR ITSELF AND ITS SUPPLIERS) ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE ACCELA SERVICES INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

7. INDEMNIFICATION

7.1 Infringement

Except as provided below, Accela agrees to (a) defend You against any claim by a third party that the Accela Service infringes a valid US patent (issued as of the Effective Date), or any copyright or trade secret, of such third party and (b) indemnify You for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claim. If any Accela Service becomes or, in Accela's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Accela may, at its option (i) obtain for You the right to continue using the Accela Service or (ii) replace or modify the Accela Service so that it becomes non-infringing without substantially compromising its principal functions. If (i) and (ii) are not reasonably available to Accela then it may (iii) terminate this Agreement upon written notice to You and refund to You any Accela Service fees that were pre-paid for the then current term, pro-rated for the remainder thereof.

7.2 Exclusions

Accela shall have no liability or obligation hereunder with respect to any claim based upon (a) use of any Accela Service in an application or environment or on a platform or with devices for which it was not designed or contemplated, (b) modifications, alterations, combinations or enhancements of the Accela Service not created by or for Accela (c) any of your content, (d) any portion of the Accela Service that implements Your requirements, (e) Your continuing allegedly infringing activity after being notified thereof or its continuing use of any version after being provided modifications that would have avoided the alleged infringement or (f) any intellectual property right in which You or any of its affiliates has an interest.

7.3 Procedures

Any claim for indemnification hereunder requires that (a) the indemnified party provides prompt written notice of the claim and reasonable cooperation, information, and assistance in connection therewith, and (b) the indemnifying party shall have sole control and authority to defend, settle or compromise such claim. The indemnifying party shall not make any settlement that requires a materially adverse act or admission by the indemnified party without the indemnified party's written consent (such consent not to be unreasonably delayed, conditioned or withheld). The indemnifying party shall not be liable for any settlement made without its prior written consent.

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7.4 Entire Liability

The foregoing states the entire liability of Accela and Your exclusive remedy, with respect to any actual or alleged violation of intellectual property rights by the Accela Services, any part thereof or its use or operation.

8. LIMITATION OF LIABILITY

EXCEPT FOR ANY BREACH OF SECTION 5 (CONFIDENTIALITY), INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 7 OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE CONCERNING THE SUBJECT MATTER OF THESE TERMS AND CONDITIONS OR ANY ORDER SCHEDULE, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (B) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS AND GOODWILL OR (C) DAMAGES IN THE AGGREGATE, IN EXCESS OF THE AMOUNT PAID TO IT (IN THE CASE OF ACCELA) OR PAID AND PAYABLE BY IT (IN THE CASE OF YOU) HEREUNDER DURING THE PREVIOUS 12 MONTHS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. TERM AND TERMINATION

9.1 Term

These Terms and Conditions and each applicable Order Schedule shall commence upon your acceptance of the Terms and Conditions and each Order Schedule and shall continue in effect until terminated in accordance with the Order Schedule.

9.2 Termination

This Agreement may be terminated (in whole, or in respect of any Order Schedule) by a party (a) if the other party materially breaches a provision of these Terms and Conditions or the applicable Order Schedule and fails to cure such breach within 30 days (10 days in the case of non-payment) after receiving written notice of such breach from the non-breaching party or (b) as otherwise set forth in the Order Schedule.

9.3 Effects of Termination

Upon any expiration or termination of any Order Schedule or the termination of these Terms and Conditions, all corresponding rights, obligations and licenses of the parties shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) shall survive and (b) the provisions of Sections 3 (Fees and Payments), 4 (Proprietary Rights), 5 (Confidentiality), 6 (Limited Warranty and Disclaimers), 7 (Indemnification), 8 (Limitation of Liability), 10 (General Provisions) and this Section 9.3 shall survive.

10. GENERAL PROVISIONS

10.1 Entire Agreement

These Terms and Conditions (including the Order Schedules) constitutes the entire agreement, and supersedes all prior negotiations, understandings or agreements (oral or written), between the parties regarding the subject matter of these Terms and Conditions (and all past dealing or industry custom). Any inconsistent or additional terms on any related writing or similar form, even if signed by the parties hereafter, shall have no effect under these Terms & Conditions. Accela reserves the right to change these Terms and Conditions from time to time upon written notice to You. The failure of either party to enforce its rights under these Terms and Conditions at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of these Terms and Conditions is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that these Terms and Conditions will otherwise remain in full force and effect and enforceable.

10.2 Prevailing Party

In any action or proceeding to enforce these Terms and Conditions, the prevailing party will be entitled to recover from the other party its costs and expenses (including reasonable attorneys' fees) incurred in connection with such action or proceeding and enforcing any judgment or order obtained.

10.3 Remedies

Except as specifically provided otherwise herein, each right and remedy in these Terms and Conditions is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of Section 4 or 5, the non-breaching party will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of posting any bond.

10.4 Notices

All notices under these Terms and Conditions will be in writing, in English and delivered to the parties at their respective addresses stated herein or at such other address designated by written notice. Notices will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile; the day after being sent, if sent for next day delivery by recognized overnight delivery service; or upon receipt, if sent by certified or registered mail, return receipt requested.

10.5 Force Majeure

In the event that either party is prevented from performing, or is unable to perform, any of its obligations under these Terms and Conditions and Order Schedule(s) (except payment obligations) due to any cause beyond its reasonable control, the affected party shall give written notice thereof to the other party and its performance shall be extended for the period of delay or inability to perform due to such occurrence.

10.6 Publicity

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Neither party shall use the other party's trademarks, trade names or make any public statements concerning the relationship between the parties without the other party's prior written consent, which will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, You hereby grant to Accela the right to use, reproduce and publish, Your name, trademarks, service marks, brand names and brand marks in connection with advertising, marketing and sales.

10.7 Assignment

These Terms and Conditions and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent, not to be unreasonably withheld, conditioned or delayed. However, without consent, either party may assign their rights and obligations hereunder to any successor to all or substantially all of its business (whether by sale of assets or equity, merger, consolidation or otherwise). These Terms and Conditions shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

10.8 Independent Contractors

The parties shall be independent contractors, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint ventures or partners for any purpose.

10.9 Anti-Corruption

You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with these Terms and Conditions. If You learn of any violation of the above restriction, You agree to contact us immediately.

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ADDENDUM TO TERMS AND CONDITIONS FOR PUBLICSTUFF PRO SERVICES AGREEMENT

The terms and conditions for the PublicStuff Pro Services Agreement with the City of Margate are hereby amended as follows:

1. **Confidentiality:** each party agrees to the confidentiality policy as provided in the terms and conditions for public stuff pro services which meet Florida Statute 815.045.

2. **Retention Of Records & Right To Access Clause:**

In accordance with Florida Statute, 119.0701 - Contracts; public records, the vendor shall keep, maintain and make available all records, regardless of format, including but not limited to finance records, statistical records, correspondence, and supporting documents pertinent to this contract for a period determined by the nature of the document, pursuant to state and federal records retention and disposition requirements, and after termination of this contract; provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law ; meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements; all records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If a contractor does not comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

3. **Venue:** This agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida.
4. **Waiver of Jury Trial:** The parties to this agreement hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the matters to be accomplished in this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.