

SOFTWARE LICENSE AND SUPPORT AGREEMENT

County of Nevada, California

This Software License and Support Agreement is made between the COUNTY OF NEVADA (herein "County") for the benefit of the County of Nevada Community Development Agency (herein "Beneficiary") and

Accela, Inc.

(herein "Contractor"), wherein County desires to retain a person or entity to provide the following services, materials and products generally described as follows:

(§1) **EnvisionConnect Software License, Support and Hosting and Envision Connect Remote License, Support and Hosting**

SUMMARY OF MATERIAL TERMS

(§2) **Maximum Agreement Price:** \$131,412
(§3) **Agreement Beginning Date:** 11/1/2016 **Agreement Termination Date:** 10/31/2019

INSURANCE POLICIES

Designate all required policies:		Req'd	Not Req'd
(§6)	Commercial General Liability (\$1,000,000.00)	<u>X</u>	<u> </u>
(§7)	Automobile Liability (\$ 300,000.00) Personal Auto	<u> </u>	<u>X</u>
	(\$1,000,000.00) Business Rated	<u>X</u>	<u> </u>
	(\$1,000,000.00) Commercial Policy	<u> </u>	<u> </u>
(§8)	Worker's Compensation	<u>X</u>	<u> </u>
(§9)	Errors and Omissions (\$1,000,000.00)	<u>X</u>	<u> </u>

NOTICE & IDENTIFICATION

(§22) Contractor: Accela, Inc. 2633 Camino Ramon, Ste. 500 San Ramon, CA 94583 Contact Person: Darryl Booth Ofc (925)359-3522 Cell (559)259-8472 e-mail: dbooth@accela.com	County of Nevada: Environmental Health Department 950 Maidu Avenue Nevada City, California 95959 Contact Person: Amy Irani (530) 265-1464 e-mail: amy.irani@co.nevada.ca.us Org Code:1123-40108-323-1000/521470
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Contractor is a: (check all that apply)

Corporation:	<u>X</u> Calif.,	<u> </u> Other,	<u> </u> LLC,	<u> </u> Non-profit
Partnership:	<u> </u> Calif.,	<u> </u> Other,	<u> </u> LLP,	<u> </u> Limited
Person:	<u> </u> Indiv.	<u> </u> Dba,	<u> </u> Ass'n	<u> </u> Other

ATTACHMENTS

Designate all required attachments:	Req'd	Not Req'd
Exhibit A: Schedule of Services (Provided by Contractor)	<u>X</u>	<u> </u>
Exhibit B: Third Party Software (Required by Contractor)	<u>X</u>	<u> </u>
Exhibit C: Schedule of Charges and Payments (Paid by County)	<u>X</u>	<u> </u>

DEFINITIONS

Agreement. The agreement set forth in this document

Application Service Provider. The term "Application Service Provider" shall mean Accela's infrastructure and services to provide access to Licensed Programs and County's database over the Internet, which would otherwise have to be located at the County's site on the County's infrastructure.

EnvisionConnect. The term "EnvisionConnect" shall mean the trade name for Licensed Programs provided under this Agreement.

EnvisionConnect Remote. The term "EnvisionConnect Remote" shall mean the trade name for Licensed Programs provided under this Agreement.

Inspector. The term "Inspector" shall mean a Beneficiary staff member whose job function requires fifty percent (50%) or more time spent conducting field activities such as inspections or investigations.

Licensed Materials. The term "Licensed Materials" shall mean computer programs, in object form, and all related documentation and materials provided to County under the terms of this Agreement. Licensed Materials shall not include Source Code.

Licensed Programs. The term "Licensed Programs" shall mean the object code version of the software, as well as all updates, enhancements and releases. Licensed Programs are a sub-set of the Licensed Materials.

Source Code. The term "Source Code" shall mean a full source language statement of the programs owned by Contractor used to prepare the Licensed Programs, including any updates, enhancements, revisions and modifications thereto that are provided to County under this Agreement. Source Code shall not include any source language statements for any portion of the Licensed Programs owned by or sublicensed from third parties

Version. The term "Version" shall mean an issue of Licensed Programs, which has been made available to the County.

Terms

Each term of this Agreement below specifically incorporates the information set forth in the Summary at page one (1) above as to each respective section (§) therein, as the case may be.

1. Scope of Services:

Contractor shall provide all of the services, materials and products (herein "Services") generally described in **Exhibit "A"**, according to a performance schedule, if applicable, as set forth in said exhibit (herein "Performance Schedule").

2. Charges and Payments:

The charges (herein "Charges") for furnishing the aforesaid Services under this Agreement are set forth in **Exhibit "C"**, including, if applicable, hourly rates, unit pricing, and expense, mileage and cost limits. Said Charges shall be presented quarterly by invoice, and shall be due within thirty (30) days of receipt of invoice unless payment is otherwise set forth in said **Exhibit "C"**, and shall remain in effect for the entire term of this Agreement, and any extension hereof. In no event will the cost to County for Services to be provided under this Agreement, including direct non-salary expenses, exceed the **Maximum Agreement Price** set forth at §2, page one (1), above.

3. Agreement Term:

This Agreement shall commence on the **Agreement Beginning Date** set forth at §3, page one (1), above. All Services required to be provided by this Agreement shall be completed and ready for acceptance no later than the **Agreement Termination Date** set forth at §3, page one (1), above.



4. Terms of License:

- 4.1. Contractor hereby grants to County, and County hereby accepts from Contractor, subject to the terms and conditions of this Agreement, a revocable, non-exclusive, non-sub licensable and non-transferable license ("License") for Beneficiary to use the Licensed Materials, defined as computer programs, in object form, and all related documentation and materials provided to County under the terms of this Agreement. Licensed Materials shall not include Source Code.
- 4.2. License is granted solely for Beneficiary's own use. The License shall be restricted for use with one (1) production server database with a single set of master code tables.
- 4.3. The License also authorizes County to maintain a back up copy of the Licensed Programs for use with databases for back up and testing purposes only. County agrees to maintain appropriate records on the quantity and location of all such copies, and produce same on demand by Contractor. County agrees to include the Contractor copyright notice on all copies, in whole or in part, of any form. County agrees to receive prior written approval from Contractor before copying any portion of the Licensed Programs for any other purpose, which Contractor may, at its sole and unfettered discretion, grant or not grant.
- 4.4. County may not assign, sublicense or otherwise transfer, in whole or in part, the License, Licensed Materials, this Agreement or any of its rights or obligations hereunder, whether voluntarily, by operation of law or otherwise, without the prior written consent of Contractor.
- 4.5. County agrees to not allow access to the Licensed Programs to any third party without written permission from Contractor.
- 4.6. Contractor is the lawful owner or licensee of all proprietary rights whatsoever in the Licensed Materials, including any changes, additions, and enhancements in the form of new or partial programs or documentation, but not as to limit the generality thereof, all copyright interests in the Licensed Materials. All copies of the Licensed Materials provided to, or reproduced by, the County pursuant to this Agreement are and remain the property of Contractor. No rights in the Licensed Materials are granted to anyone other than those set forth in this Agreement. The County shall use its commercially reasonable best efforts to prevent any violations of Contractor's property rights in the Licensed Materials and shall, under no circumstances, sell, lease, sublease, sublicense, assign, barter, encumber, or otherwise transfer the Licensed Materials or use the Licensed Materials for the processing of data for others, except as provided herein.
- 4.7. The County shall have no right to modify, enhance or otherwise change the Licensed Materials in any way without the prior written consent of the Contractor. However, the Beneficiary may merge the Licensed Materials into other materials to form a system, provided that upon termination of the License granted by this Agreement, the Licensed Materials will be completely removed from the system and treated as though permission to merge had never been granted. Use of the Licensed Materials in a system shall remain subject to all other terms of this Agreement.
- 4.8. The Licensed Materials and all other data or materials supplied by Contractor to County are confidential and proprietary to Contractor, protected by law and of substantial value to Contractor, and their use and disclosure must be carefully and continuously controlled.
- 4.9. The Licensed Materials and the Source Code are protected by the Copyright Laws of the United States.
- 4.10. All logos, trademarks and trade names of Contractor are proprietary to Contractor and may only be used as authorized in writing by Contractor.
- 4.11. County shall keep all property of Contractor free and clear of all claims, liens and encumbrances.
- 4.12. County shall notify Contractor immediately of the unauthorized possession, use or knowledge of any item supplied to County pursuant of this Agreement.



4.13. In the event County breaches or attempts to breach any of the provisions of this Section 4, Contractor shall have the right, in addition to such other remedies which may be available to it, to injunctive relief enjoining such breach or attempt to breach, it being acknowledged that legal remedies are inadequate. The provisions of this Section 4 shall survive termination of this Agreement.

5. County Data

The County will at all times retain ownership of its data. Contractor specifically disclaims ownership of any of County's data, and agrees to not withhold access to County's data.

6. Commercial General Liability Insurance: (County Resolution No. 90674)

If §6 at page one (1) hereof shall indicate a **Commercial General Liability** insurance policy is required, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:

- (i) Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount indicated at said §6;
- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance;
- (iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

7. Automobile Liability Insurance: (County Resolution No. 90676)

If §7 at page one (1) hereof shall require either a Business Rated or a Commercial Automobile Liability insurance policy, for each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following provisions:

- (i) Liability protection for death or bodily injury to a person or persons, property damage, and uninsured and underinsured coverage, combined single limit coverage, in the minimum amount indicated at said §7;
- (ii) An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided or the relationships created under this Contract;
- (iii) A provision that said insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance;
- (iv) A provision that said insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

If §7 at page one (1) hereof shall require a Personal Auto policy, for each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance for a minimum of three hundred thousand dollars, (\$300,000), in combined single limits, and naming the County as additionally insured.

8. Worker's Compensation: (County Resolution No. 90674)

If §8 at page one (1) hereof shall indicate a **Worker's Compensation** insurance policy is required, Contractor shall maintain said policy as required by law, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.



Before commencing to utilize employees in providing Services under this Contract, Contractor warrants that it will comply with the provisions of the California Labor Code, requiring Contractor to be insured for worker's compensation liability or to undertake a program of self-insurance therefor.

9. Errors and Omissions:

If §9 at page one (1) hereof shall indicate **Errors and Omissions** insurance is required, Contractor shall maintain either a professional liability or errors & omissions policy in the minimum amount indicated, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.

10. Miscellaneous Insurance Provisions: (County Resolution No. 90675)

All policies of insurance required by this Agreement shall remain in full force and effect throughout the life of this Agreement and shall be payable on a "per occurrence" basis unless County specifically consents to "claims made" coverage. If the County does consent to "claims made" coverage and if Contractor changes insurance carriers during the term of this Agreement or any extensions hereof, then Contractor shall carry prior acts coverage.

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by County, its officers, agents and/or employees, shall be excess only and not contributing with insurance required or provided under this agreement.

At all times, Contractor shall keep and maintain in full force and effect throughout the duration of this Agreement, policies of insurance required by this Agreement which policies shall be issued by companies with a Best's Rating of B+ or higher (B+, B++, A-, A, A+ or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6, 7, 8 or 9) according to the current Best's Key Rating Guide, or shall be issued by companies approved by the County Risk Manager. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, Contractor shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph, or be in material breach of this Agreement.

Failure to provide and maintain the insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Agreement shall constitute a material breach of this agreement (herein "Material Breach"); and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Agreement, or both. (See §12, below, as these provisions additionally apply to subcontractors.)

11. Warranty:

Accela warrants that it is the owner of the Licensed Materials and that it has the right to grant the License granted hereunder. Accela agrees to defend County against, and pay the amount of any adverse final judgment (or settlement to which Accela consents) resulting from third party claim(s) (hereinafter "Indemnified Claims") that the Licensed Materials infringe any copyright or patent; provided Accela is notified promptly in writing of the Indemnified Claims and has sole control over its defense or settlement, and County provides reasonable assistance in defense of same.

Contractor warrants that the Licensed Programs will perform substantially in accordance with its then-current Licensed Materials, at no additional cost to County, provided that:

- a. the Licensed Programs have not been modified, changed or altered by anyone other than Contractor or as authorized by Contractor in writing;
- b. County is operating the then-current version of the Licensed Programs;
- c. County's computer system is in good operating order and is installed in a suitable operating environment;
- d. County's computer system configuration used in the operation of the Licensed Programs meets Contractor's approved specifications;
- e. an error or defect has not been caused by County or its agents, employees or contractors;
- f. County has promptly notified Contractor of the error or defect when it is discovered;



- g. all fees then due to Contractor have been paid; and
- h. County is not otherwise in breach of its obligations under this Agreement.

In such event, Contractor shall use its commercially reasonable efforts to cause the Licensed Programs to perform substantially in accordance with its then-current Licensed Materials as soon as reasonably practicable under the circumstances.

If County notifies Contractor of an error or defect in the Licensed Programs and, after investigation by Contractor, Contractor determines that such error or defect occurred as a result of County not being in compliance with one or more of items a-h above, then County shall reimburse Contractor at Contractor's then prevailing rates for all costs incurred in investigating such error or defect.

EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PROGRAMS, THE LICENSED MATERIALS OR ANY UPDATES, ENHANCEMENTS OR RELEASES THERETO, OR ANY OTHER SERVICES OR GOODS PROVIDED BY CONTRACTOR TO COUNTY IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS AN EXPRESS LIMITATION OF LIABILITY, COUNTY'S SOLE AND EXCLUSIVE REMEDIES AND CONTRACTOR'S ONLY OBLIGATIONS UNDER THE WARRANTIES SET FORTH ABOVE AND THIS AGREEMENT IS TO CAUSE THE LICENSED PROGRAMS TO OPERATE SUBSTANTIALLY IN ACCORDANCE WITH CONTRACTOR'S THEN-CURRENT LICENSED MATERIALS OR TO CORRECT THE THEN-CURRENT LICENSED MATERIALS. AT CONTRACTOR'S SOLE AND UNFETTERED DISCRETION.

The limitation of liability described in this Section excludes damages arising from crimes, torts or intentional acts of Contractor and their respective, employees, officers, or agents which result in personal injury, tangible property damage or death to any person. This exclusion shall not apply to any claims with respect to the Licensed Program or the performance of Contractor under this Agreement (except as they may result in personal injury, tangible property damage or death).

For the purposes of this limitation, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells data processing devices or any other media which are used with electronically controlled equipment.

CONTRACTOR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED PROGRAMS SHALL MEET COUNTY'S REQUIREMENTS OR SHALL OPERATE IN COMBINATION WITH OTHER SOFTWARE OR SYSTEMS WHICH COUNTY SELECTS FOR USE, OR THAT THE OPERATION OF THE LICENSED PROGRAMS SHALL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL ERRORS AND DEFECTS HAVE BEEN IDENTIFIED AND CORRECTED BY CONTRACTOR.

12. General Indemnification

12.1. Contractor shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses (except for claims pertaining to infringement of intellectual property rights, which are separately provided for above) including attorney fees brought by any third party, arising out of any breach of the Agreement by Contractor, caused in whole or in part by any negligent act or omission of Contractor, anyone employed by Contractor or anyone for whose acts Contractor may be liable, except to the extent caused by the negligence, omission, or willful misconduct of, or resulting from work performed by or at the direction of, the County, its employees, agents, consultants or subcontractors. However, Contractor is not obligated to hold harmless, defend or indemnify County unless County does all of the



following:

- a. In the event the County modifies the EnvisionConnect software, such that it causes the software to become infringing or potentially infringing, the County will modify the software so that it becomes non-infringing. .
- b. notify Contractor of the claims, damages, losses and/or expenses in writing within a reasonable period of time, such that Contractor suffers no prejudice to its rights;
- c. give Contractor the right to control and direct the defense and settlement of that action;
- d. make no compromise, settlement or admission of liability; and
- e. provide reasonable assistance and cooperates in the defense of that action.

12.2. Contractor's obligations as stated in this section will not apply to any claim, suit or proceeding to the extent it is based on any of the following:

- a. any modification of the EnvisionConnect software other than by Contractor, or the combination of the software with non-Contractor software or any hardware that fails to comply with the EnvisionConnect hardware and software requirements;
- b. County's use of other than the latest release of the EnvisionConnect software if County is informed that a claim, suit or proceeding can be avoided by use of the latest release;
- c. any use of the EnvisionConnect software not authorized by this Agreement; or
- d. any modification or derivative work made by Contractor based on County's instructions, designs or specifications.

13. Limitation of Liability

CONTRACTOR SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER SUFFERED OR INCURRED BY COUNTY AS A CONSEQUENCE OF THE USE OR PERFORMANCE OF THE LICENSED PROGRAMS OR OTHERWISE, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, CONTRACTOR SHALL NOT BE LIABLE FOR ANY LOSS, COST, EXPENSE OR DAMAGE TO COUNTY IN AN AMOUNT EXCEEDING THE LIMITS OF THE LIABILITY INSURANCE CARRIED BY CONTRACTOR AS REQUIRED BY THIS AGREEMENT, WHETHER ARISING AS A RESULT OF: (A) ANY BREACH OF THIS AGREEMENT BY CONTRACTOR; (B) ANY ACT OR FAILURE TO ACT OF CONTRACTOR; OR (C) ANY CLAIM MADE AGAINST COUNTY BY ANY OTHER PARTY, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE CLAIM OR POTENTIAL CLAIM. COUNTY AGREES THAT IT SHALL NOT ASSERT ANY CLAIMS AGAINST CONTRACTOR BASED ON ANY THEORY OF STRICT LIABILITY.

14. Nondiscriminatory Employment:

In providing Services hereunder, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, political affiliation, ancestry, marital status or disability. This policy does not require the employment of unqualified persons.

15. Prior Nevada County Employment (County Resolution No. 03-353):

Effective July 22, 2003, it is the policy of the County of Nevada that former members of the Board of Supervisors, a former CEO, or a former Purchasing Agent, for a period of twelve (12) months following the last day of employment, shall not enter into any relationship wherein that former employee or former Board member receives direct remuneration from a legal entity that, during the last twelve (12) months of said employment or Board member's service, entered into a contract with, or received a grant from the County of Nevada. Provided however, that this prohibition shall not apply to any employee that did not personally approve a contract with or grant to said legal entity during the last twelve (12) months of said employment, and shall not apply when the Board of Supervisors did not approve a contract with or grant to said legal entity during the last twelve (12) months of said Board member's service.



A violation of this policy shall subject Contractor to all of the remedies enumerated in said resolution and as otherwise provided in law, which remedies shall include but not be limited to injunctive relief, cancellation and voiding of this Agreement by County, a return of grant money, a cause of action for breach of contract, and entitlement to costs and reasonable attorney fees in any action based upon a breach of contract under this provision.

16. Termination:

16.1 Termination by County

- a. County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's convenience or because of the failure of Contractor to fulfill the obligations hereunder. Upon receipt of such notice, Contractor shall immediately discontinue all services affected (unless the notice directs that the Disentanglement provision herein shall be invoked), and deliver to County all data, estimates, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by Contractor in performing services under this Agreement, whether completed or in process.
- b. For Convenience: County may, by written notice stating the extent and effective date, terminate this Agreement in whole or in part at any time. Upon receipt of such notice, Contractor shall promptly cease work and notify County as to the status of its performance. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for services performed to the date of termination, to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such information as is necessary to determine the mutually agreeable reasonable value of the services rendered by Contractor. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.
- c. For Cause: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, the County may elect to immediately suspend payments or terminate the contract, or both, without notice.

16.2 Termination by Contractor

- a. For Nonpayment: Should County fail to pay Contractor all or any part of the payment set forth in Exhibit B, Contractor may, at Contractor's option, terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- b. For Cause: Should County default in the performance of this Agreement or materially breach any of its provisions, Contractor, at Contractor's sole option, may terminate this Agreement upon thirty (30) days written notice.

16.3 Disentanglement

If directed by County, Contractor shall cooperate with County and County's other vendors and contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County to accomplish a complete transition of the services as set forth in Exhibit A to this Agreement being terminated to County or to any replacement provider designated by County, without any interruption or adverse impact on those services or any other services provided by third parties. Contractor shall fully cooperate with County and any new service provider and otherwise promptly take all steps, including but not limited to providing to County or any new service provider all requested information or documentation required to assist County in effecting a complete transition to the new service provider. Contractor shall provide all information or documentation regarding the



services to be transitioned, including but not limited to data conversion tables, client files, interface specifications, and training materials. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or the County's designee. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by the County at no more than Contractor's costs, up to the total amount of this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor's obligation to provide the Services shall not cease until the earlier of the following: a) the Disentanglement is completed to the County's reasonable satisfaction, or b) twelve (12) months after the expiration of the then-current Term of the Agreement.

16.4 Return, Transfer and Removal of Data and other Assets

- a. Upon termination of this Agreement, Contractor shall return to County all County-furnished assets in Contractor's possession.
- b. Upon termination of this Agreement, Contractor shall ensure that any and all of County's data maintained by Contractor is extracted in a commercially recognized format acceptable to County prior to the termination date or the completion of the Disentanglement period, whichever is later, and that said data is securely transmitted to County or County's designee.

17. Entire Agreement:

This Agreement represents the entire agreement of the parties, and no representations have been made or relied upon except as set forth herein. This Agreement may be amended or modified only by written, fully executed agreement of the parties.

18. Jurisdiction and Venue:

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Nevada County, California.

19. Dispute Resolution:

The parties shall act in good faith and use reasonable efforts to amicably settle all disputes, controversies, or differences, which may arise between them ("Dispute"). If no resolution is reached, the parties shall submit the Dispute to a mutually acceptable mediator, initiated by written demand of one party served on the other, and if the mediator determines that the Dispute cannot be resolved by mediation, then the parties may, upon mutual agreement, submit the controversy to binding arbitration in accordance with the rules and regulations of the American Arbitration Association. Arbitration shall take place in Nevada County, California. The arbitration award shall be supported by written conclusions of law and fact. Punitive damages shall not be permitted under any circumstances. The existence of the dispute, the dispute resolution process and the arbitrator's award shall be maintained confidential, unless disclosure is required by law, provided that the arbitrators' award may be entered as a final judgment in any court in Nevada County, California having jurisdiction. The provisions of this Section 21 shall not apply to those instances in which either party is entitled to seek injunctive relief pursuant to the terms of this Agreement and desires to do so.

20. Contractor Staff:

County shall not seek out and solicit for hire any identified current or former Contractor staff member without prior written consent from Contractor.

21. Compliance with Applicable Laws:

The Contractor shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern or affect the Services to be provided by this Contract.



22. Notices:


This Agreement shall be managed and administered on County's behalf by the department and the person set forth at §22, page one (1) of this Contract, and all invoices shall be submitted to and approved by this Department. In addition to personal service, all notices may be given to County and to Contractor by first class mail addressed as set forth at said §22 Said notices shall be deemed received the fifth (5th) day following the date of mailing or the earlier date of personal service, as the case may be.

23. Authority:

All individuals executing this Agreement on behalf of Contractor represent and warrant that they are authorized to execute and deliver this Agreement on behalf of Contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the **Agreement Beginning Date** set forth at §3 on page one (1) above.

CONTRACTOR:


By: Rob Cassetti
Title: Sr. VP, Sales & Marketing
Accela, Inc.
Dated: 10/17/16

COUNTY OF NEVADA:

Honorable Dan Miller
Dated: _____

Approved as to Form:

County Counsel



EXHIBIT "A-1"
SCHEDULE OF SERVICES

Contractor shall provide County with the Licensed Materials through a "Software as a Service" model, where the host at its site the Licensed Materials will be hosted at Contractor's site. The following services are included in the license, support and hosting fees:

A-1
Telephone Support

Contractor provides toll-free phone support during Contractor's regular business hours (6:00 A.M. to 6:00 P.M., Pacific Time, Monday through Friday, with Federal and State holidays excluded.) Authorized callers will be limited to the Beneficiary's Primary IT and Primary Customer Service Contacts.

Incident Response Time:

- E-mail, Phone, or Fax Submissions: One (1) hour M-F, 8am to 5pm with Federal and State holidays excluded
- Internet Submission: instantaneous

Issues can be reported 24-hours a day via Contractor's web-based incident reporting system, e-mail, fax or telephone. Contractor supports both the applications it develops and provides first-tier support for the database backend on which these applications run.

Holidays Include:

- New Year's Day
- Martin Luther King Jr. Birthday
- Presidents' Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- The Friday after Thanksgiving
- Christmas Eve
- Christmas Day

A-2
Web-based Support

All clients have 24-hour access to Contractor's web resources.

- Incident Reporting
- Resolution Reporting
- System Documentation
- "Did You Know" Articles
- Online Support Forms

A-3
Licensed Programs Maintenance

Contractor will provide Licensed Programs maintenance, which includes defect fixes, and any other required modifications to keep the Licensed Programs in conformance with the specifications contained in the then current Contractor Licensed Materials. Contractor will amend the specifications only to remove documentation errors, provide consistency of interpretation or describe improvements to the Licensed Programs. Contractor will correct any error or malfunction in the Licensed Programs that prevents them from operating in conformance with the then current Licensed Materials, or Contractor will provide a commercially reasonable alternative that will conform to the then current Licensed Materials. If County's system is inoperable due to a reproducible error or malfunction, and County is using the current release of the Licensed

A-4
Emergency Center Data
Coordinator

Programs, Contractor will provide continuous effort to correct the error or malfunction.

Beneficiary will be given this Data Center Coordinator's 24/7 Emergency Contact telephone number. Beneficiary will identify a Primary IT Contact who will only resort to utilizing the emergency number in an emergency situation as defined in the terms of use. County agrees to the terms of use of the Data Center Coordinator Emergency Telephone Number: 1) Internet connectivity has been verified for the County; 2) Issue has been reproduced with multiple users; 3) There is NO connection to the database server; and 4) All attempts to resolve this at the County side has failed. If any of these criteria are not met, the issue must be escalated through the toll free Technical Support incident reporting channels; not the Emergency Data Center contact.

A-5
Applying Patches and
Upgrades

Contractor staff transfers installation files to remote server and performs installation.

A-6
Database Backup

Contractor will backup Beneficiary database daily during the scheduled maintenance window defined below.

- Backup files are stored on tape in the Data Center.
- Backup files are retained for four (4) weeks.
- Backup distribution will occur by request via an FTP site.

A-7
Access Control

Dedicated Firewall - Cisco Pix 501 and Windows Authentication

A-8
Hardware Replacement

Hardware Replacement within one-hour of problem identification.
Hardware is defined as:

- Hard Disk
- Processor(s)
- RAM
- Motherboard
- NIC Card
- Routers
- Switches
- Cabling

System diagnostics will continue after hardware replacement.

A-9
Performance

The following are average performance statistics

- 99.5% Network Uptime
- 99.5% Server Uptime
- 99.5% Application Availability

The above statistics do not consider the following exceptions:

- Scheduled maintenance window (5pm-5am Mon-Fri, and 8am-5pm Sat-Sun).
- Forces majeure: Circumstances beyond Contractor's reasonable control including, war, armed conflict, sabotage, embargo, fire, flood, earthquakes, tornados, labor strikes, insurrection, virus attacks or hackers County network and Internet issues, and DNS issues outside the direct control of Contractor.



A-10
System Monitoring

In order to achieve 99.5% or greater Uptime, the Contractor and its agents agree to the following best practices:

- Restrict and monitor server access according to named user account(s) and role-based security access.
- Install and maintain hardware-based firewall sufficient to limit access per port, IP address, user, etc.
- Install, maintain, and monitor commercial server-level antivirus detection software.
- Log and respond to security events including virus quarantine, denial of service, unauthorized access, etc., drawing upon third-party security resources reserved for such events.
- Coordinate with data-center to provision new equipment within service-level-agreements.
- Maintain and rotate encrypted data backups in two (or more) geographically diverse locations.
- Contractor's monitoring service will ping the server and perform multiple port checks at 5-minute intervals. If the ping fails, Contractor will investigate the cause and perform necessary steps to correct the problem.

A-11
User Community Tools

User Groups: User group meetings occur on a frequency determined by the user community. These meetings allow users to share ideas, workflows, etc. County may send representatives to any user group meeting conducted by Contractor clients.

List Server: Contractor's clients use a list server to share information. Workflows for the Licensed Programs, environmental regulation workflows, user-customized reports, and general questions and answers are available.

Contractor Exchange: Contractor Exchange is a web-based file exchange solution that provides a secure area where clients can share files. Beneficiary has the freedom to upload/download useful reports, scripts, and other files at times most convenient to them.

Beneficiary has a searchable archive of environmental regulation workflows, Licensed Programs workflows, user-customized reports, scripts, and general questions and answers that can be accessed through keyword searches. Users have the option of drilling down through categories or searching for files by using a search dialog box.

A-12
Refresher Training

There will be no charge for refresher training conducted at Contractor's office on mutually agreeable dates, if the material was covered and the attendee(s) was included in Beneficiary initial training. Refresher training does not include training for new Licensed Programs or Beneficiary staff that have not been trained before, which are billable services.

A-13
Client Relationship Management

Contractor utilizes a Client Relationship Management (CRM) software application that enables Contractor to manage every aspect of our relationship with the County. County information acquired from sales, marketing, client service, and support is captured and stored in a centralized database to improve client satisfaction. Contractor will not release any County information without prior authorization from the County.

EXHIBIT "A-2"
SCHEDULE OF SERVICES ENVISIONCONNECT REMOTE

In addition to those services set forth under EXHIBIT "A-1" SCHEDULE OF SERVICES, Accela, Inc. will provide project implementation services for EnvisionConnect Remote as set forth in Attachment A – Key Project Deliverables.



EXHIBIT "B"
THIRD PARTY SOFTWARE

B-1 SAP Crystal Reports

Crystal Reports is a database report designer and viewer owned by SAP. Contractor utilizes Crystal Reports to design "canned" and custom reports that are later distributed with the Licensed Materials. The Licensed Materials include a server-side report generation component as a service provided by Contractor to County under this agreement. Contractor warrants that the County is permitted to utilize the report components pursuant to section 4.2.5 of the Crystal Reports Standard, Professional, and Developer License Agreement. Use of the server-side report generation component within the Licensed Materials is subject to the following terms:

- County agrees not to modify, disassemble, decompile, translate, adapt or reverse-engineer the Runtime Product or the report file (.RPT) format;
- County agrees not to distribute the Runtime Product to any third party;
- County agrees not to use the Runtime Product to create for distribution a product that is generally competitive with SAP product offerings;
- County agrees not to use the Runtime Product to create for distribution a product that converts the report file (.RPT) format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of SAP;
- County agrees not to use the Runtime Product on a rental or timesharing basis or to operate a service bureau facility for the benefit of third-parties;
- SAP AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. SAP AND ITS SUPPLIERS SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, COVER OR OTHER DAMAGES ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SOFTWARE.



B-2 MICROSOFT SQL SERVER

Microsoft SQL Server 2005 Standard Edition (or higher) is a database management system required by the Licensed Materials. As an Application Service Provider Contractor will host County's database and provides license to Microsoft SQL Server 2005 Standard Edition under Microsoft's Service Provider License Agreement (SPLA). This Microsoft SQL Server 2005 (SQL Server 2005) license is subject to the following terms.

- County agrees not to remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the SQL Server 2005;
- County agrees not to reverse engineer, decompile, or disassemble SQL Server 2005, except to the extent that such activity is expressly permitted by applicable law;
- MICROSOFT DISCLAIMS ALL WARRANTIES BY MICROSOFT AND ANY LIABILITY BY MICROSOFT ITS AFFILIATES OR SUPPIERS FOR ANY DAMAGE, WHETHER DIRECT OR INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OF THE SOFTWARE SERVICES PROVIDED THROUGH THIS AGREEMENT.
- All support SQL Server 2005 will be provided by Contractor. Contractor must enable the automatic update feature in the SQL Server 2005 to automatically download and install critical updates to the SQL Server 2005.
- County agrees not to market, distribute, sublicense, lease or rent the SQL Server 2005.
- County agrees not to infringe any intellectual property or other rights of Microsoft.
- Contractor may disclose County user count information as required by the SPLA.



EXHIBIT "C"
SCHEDULE OF CHARGES AND PAYMENTS

C-1 Annual License, Support and Hosting Fees

1.0 License and Support Fees

<u>Product</u>	<u>User Licenses</u>	<u>Rate per Inspector per Month/Year</u>	<u>Total</u>
YEAR 1			
EnvisionConnect	13	\$110.25/Month	\$17,199.00
ASP Hosting			\$7,858.68
CERS EDT			\$2,016.00
EnvisionConnect Remote	13	\$720.00/Year	\$9,360.00
		Year 1 Total	\$36,433.68

First-Term Annual Maintenance and Support Fees are fixed-priced deliverables for which full payment is due upon contract signing.

Renewal fees for the Second-Term through Third-Term Annual Maintenance and Support are subject to annual increases of four percent (4%) over the previous year's fees and are due on the anniversaries of the Effective Date.

1.1 Partial Year License and Support Fees for EnvisionConnect

Due to the timing of this agreement, the COUNTY will make an additional payment at the time of contract signing to CONTRACTOR for EnvisionConnect support for the period of 8/1/2016 to 10/31/16 as shown in Attachment B.

2.0 Implementation Costs for EnvisionConnect Remote

One-time Professional Service Fees	Amount
Two (2) Days On-Site Training	\$2,940.00
Two (2) Days On-Site Training per diem	\$850.00
Configuration Preparation for EnvisionConnect Remote	\$8,775.00
Total	\$12,565.00

C-3 Additional Licenses and Services



During the period of this Agreement, the parties may elect to increase the number of licenses and/or the nature of services to be provided. Any such change will be subject to an amendment to this Agreement, executed in writing by the parties, and will be based on the following schedule of charges:

Software Licenses

EnvisionConnect Licenses: \$110.25 per Inspector per month

EnvisionConnect Remote Licenses: \$720 per Inspector per year

Professional Services

Custom Programming, Training, Report Development, Data Correction or Restoration (unless required as a result of Contractor's negligence while working on County's system): \$185.00 per hour

Consultation: \$185.00 per hour

Support

Phone Support Outside Contractor's Normal Service Hours of 6:00 a.m. to 6:00 p.m.(Pacific Time), Monday through Friday, excluding federal and state holidays: \$185.00 per hour.

Travel and Other Expenses

An estimate of per diem travel expenses will be provided at the time the Agreement is amended to provide for additional services. Other expenses may include, but not be limited to, those for parts and supplies, media and reproduction, and long distance calls initiated from Accela to County's system. Accela will obtain County's prior approval before expending more than \$100.00 per incident.

All prices are exclusive of any applicable taxes.

C-4 Taxes

Any tax, such as sales and use taxes, exclusive of property and income taxes, that Contractor is required to collect or pay based upon the sale or delivery of products or services under this Agreement shall be paid by County to Contractor, or County shall pay directly to the taxing agency with proof of payment provided to Contractor. This obligation extends retroactively if so assessed by a taxing agency. If County is using the Licensed Programs in California, and receives the Licensed Programs on tangible personal property (for example floppy disks, magnetic tape, Zip disk, CD-ROM, or any other medium by which the Licensed Programs are temporarily stored to effect transfer to County's computer) then the full license and support fee, as well as training and conversion fees, are subject to California sales and use tax. The definition of transfer is the leaving behind of such tangible personal property. However, if the Licensed Programs are received by County over communication lines, via the Internet, a bulletin board service or through a direct connection between County and Contractor computers, the license and support, training, and conversion fees are not subject to sales and use tax. In California, all parts and supplies are subject to sales and use tax, and hourly-based professional services, other than training and file conversion for the Licensed Programs, are not. If County is using the Licensed Programs in a state other than California then County is responsible for knowing the sales and use tax rules of that state, and remitting all applicable sales and use taxes as appropriate.

