



# **Snohomish Health District Envision Connect Hosted License & Support Agreement**

Signed contract must be returned, to Accela by Customer, within 30 days of receipt. In the event signed contract is not received by Accela within 30 days of Customer receipt, prices and terms contained herein are subject to increase.

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## Accela License & Support Agreement

This Agreement is entered into between Accela, Inc with its principal place of business at 2633 Camino Ramon, Suite 500, San Ramon, California 94583, and Snohomish Health District (hereinafter "Customer") with principal place of business at 3020 Rucker Ave, Everett, WA 98201.

WHEREAS Accela is the developer and owner of a certain set of software products marketed using the trade name EnvisionConnect™;

AND WHEREAS Customer desires to obtain from Accela a revocable, non-exclusive, non-sub licensable and non-transferable license for Customer to use Accela's Licensed Programs and services;

NOW THEREFORE this Agreement witnesses that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises herein, the parties agree as follows:

### Appendices

The following appendices are attached to and form part of this Agreement:

Appendix	Description
Appendix A	Third Party Software

### 1. Definitions.

1.1. Agreement. The agreement set forth in this document

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

1.3. 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.

1.4. Source Code. The term "Source Code" shall mean a full source language statement of the programs owned by Accela used to prepare the Licensed Programs, including any updates, enhancements, revisions and modifications thereto that are provided to Customer 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.

1.5. Effective Date. The term "Effective Date" shall mean a specific mutually agreed upon date as defined in Appendix A, Attached Order Form.

1.6. Anniversary Date. The term "Anniversary Date" shall mean a specific mutually agreed upon date as defined in Appendix A, Attached Order Form.

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

1.8. Professional Service Request (PSR). The term "PSR" shall mean the document and process required to authorize professional services which are outside of those agreed to in Appendix C, Statement of Work.

1.9. EnvisionConnect. The term EnvisionConnect shall mean the trade name for the Licensed Programs provided under this Agreement as described in Appendix A.

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

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

1.12. Data Center. Accela contracts with a third-party provider to host customer data and software.

## **2. License.**

2.1. Accela hereby grants to Customer, subject to the terms and conditions of this Agreement, a limited, revocable, non-exclusive, non-sub licensable and non-transferable license ("License") to use the Licensed Materials solely for Customer's own use. The License shall be restricted for use with one (1) production server database with a single set of master code tables.

2.2. The License also authorizes Customer to maintain a back up copy of the Licensed Programs for use with databases for back up and testing purposes only. Customer agrees to maintain appropriate records on the quantity and location of all such copies, and produce same on demand by Accela. Customer agrees to include the Accela copyright notice on all copies, in whole or in part, in any form. Customer agrees to receive prior written approval from Accela before copying any portion of the Licensed Programs for any other purpose, which Accela may, at its sole and unfettered discretion, grant or not grant.

2.3. Customer may not assign, sublicense or otherwise transfer, in whole or in part, the License, this Agreement or any of its rights or obligations hereunder, whether voluntarily, by operation of law or otherwise, without the prior written consent of Accela.

2.4. Customer agrees to not allow access to the Licensed Programs to any third party without written permission from Accela.

## **3. Ownership.**

3.1. Accela 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 Customer pursuant to this Agreement are, and remain the property of Accela. No rights in the Licensed Materials are granted to anyone other than those set forth in this Agreement. The Customer shall use its commercially reasonable best efforts to prevent any violations of the Accela'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.

3.2. The Customer shall have no right to modify, enhance, make any form of derivative work, or otherwise change the Licensed Materials in any way without the prior written consent of Accela, however the Customer shall be entitled to 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.

3.3. The Licensed Materials and all other data or materials supplied by Accela to Customer are confidential and proprietary to Accela, protected by law and of substantial value to Accela, and their use and disclosure must be carefully and continuously controlled;

3.4. The Licensed Materials and the Source Code are protected by the Copyright Laws of the United States.

3.5. All logos, trademarks and trade names of Accela are proprietary to Accela and may only be used as authorized in writing by Accela.

3.6. Customer shall keep all property of Accela free and clear of all claims, liens and encumbrances.

3.7. Customer shall notify Accela immediately of the unauthorized possession, use or knowledge of any item supplied to Customer pursuant of this Agreement. Customer is liable to Accela for any losses incurred while the Software is in Customer's possession.

3.8. In the event Customer breaches or attempts to breach any of the provisions of this Section 3, Accela 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 3 shall survive termination of this Agreement.

#### **4. Prices, Adjustments, and Taxes.**

4.1. Prices for license fees and professional services are contained in Appendices A and D. The original license and annual fees are based on the number of Inspectors specified in Appendix A. Payment terms are net 30 days.

4.2. Customer agrees to pay for additional Inspectors as they are added at Accela's then prevailing license and maintenance fees.

4.3. After the initial term and for successive terms thereafter, Accela will notify Customer at least sixty (60) days prior to the end of the then current term of Accela's intent to increase prices for the successive term.

4.4. Any tax, such as sales and use taxes, exclusive of property and income taxes, that Accela is required to collect or pay based upon the sale or delivery of products or services under this Agreement shall be paid by Customer to Accela, or Customer shall pay directly to the taxing agency with proof of payment provided to Accela. This obligation extends retroactively if so assessed by a taxing agency.

4.5. If Customer 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 Customer'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 Customer over communication lines, via the Internet, a bulletin board service or through a direct connection between Customer and Accela 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.

4.6. If Customer is using the Licensed Programs in a state other than California then Customer is responsible for knowing the sales and use tax rules of that state.

4.7. Accela will assess and Customer agrees to pay a late charge of 1 ½ % per month, or the highest amount allowed by law, for each month a payment is 30 days past due.

4.8. Accela reserves the right to withhold services for non-payment of fees.

4.9. Section 6 lists products and services that are not included in the license and support fee. Fees for Customer's use of these items are due and payable when invoiced.

5. **Application Service Provider Support.** The following services are included in the license, support, and Application Service Provider hosting fees:

5.1. **Telephone Support:** Accela provides toll free phone support during Accela's regular business hours (4:00 A.M. to 6:00 P.M., Pacific Time, Monday through Friday, excluding Accela's observed holidays.) Authorized callers will be limited to the Customer's Primary IT and Primary CS Contacts.

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

Incident Response Time

- E-mail, Phone, or Fax Submissions: One (1) hour M-F, 6am to 6pm with Federal and State holidays excluded
- Internet Submission: instantaneous Web response with incident tracking number

5.2. **Web-based Support:** All customers have 24-hour access to Accela's web resources.

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

5.3. **Licensed Programs Maintenance:** Accela will provide revisions of and enhancements to Licensed Material, which includes fixes, patches, and any other modifications to keep the Licensed Programs in conformance with its published specifications as such updates are generally released by Accela. Accela will correct any material error or malfunction in the Licensed Programs that prevents them from operating in conformance with the then current Licensed Materials, or Accela will provide a commercially reasonable alternative that will conform to the then current Licensed Materials.

If Customer's system is inoperable due to a reproducible error or malfunction, and Customer is using the current release of the Licensed Programs, Accela will provide continuous effort to correct the error or malfunction.

Accela will provide support for the current release of each of its maintained software applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". Accela will respond to maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by Accela will not be provided pursuant to this Agreement, but may be separately available at rates and on terms which may vary from those described herein.

Accela will commence and complete the maintenance obligations described in this Agreement in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of Accela's industry, to ensure that the operation of the maintained software products does not materially differ from documented specifications. Accela may make repeated efforts within a reasonable time period to resolve maintenance requests.

**5.4. Emergency Center Data Coordinator:** One (1) authorized caller, will be given this Data Center Coordinator's 24/7 Emergency Contact telephone number. This authorized caller will be the Agency's Primary IT Contact and will only resort to utilizing the emergency number in an emergency situation as defined in the terms of use. This Primary IT Contact agrees to the terms of use of the Data Center Coordinator Emergency Telephone Number: 1) Internet connectivity has been verified for the agency 2) Issue has been reproduced with a multiple users 3) There is NO connection to the database server. 4) All attempts to resolve this at the customer 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.

**5.5. Applying Patches and Upgrades:** Accela staff transfers installation files to remote server and performs installation.

**5.6. Database Backup:** Accela will backup Customer 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. Customer need only contact Accela via e-mail, phone or fax, and Accela will provide the requested data with instructions to obtain it from an FTP site.

**5.7. Access Control:** Dedicated Firewall - Cisco Pix 501 and Windows Authentication

**5.8. 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.

**5.9. Performance:** The following are average performance statistics

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

The above statistics do not include the following exceptions:

- Scheduled maintenance window (5pm-5am Mon-Fri, and 8am-5pm Sat-Sun). Accela will endeavor to provide as much notice as is practicable under the circumstances for updates and fixes which may be applied on a more urgent basis.

- Forces majeure: Circumstances beyond Accela's reasonable control including, war, armed conflict, sabotage, embargo, fire, flood, earthquakes, tornados, labor strikes, insurrection, virus attacks or hackers, Customer network and Internet issues, and DNS issues outside the direct control of Accela.

5.10. **System Monitoring:** Accela's monitoring service will ping the server and perform multiple port checks at 5-minute intervals. If the ping fails, the system will be rebooted.

5.11. **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. Customer may send representatives to any user group meeting conducted by Accela customers.

Accela's customers use a Community Web Site to share information such as workflows for the Licensed Programs, environmental regulation workflows, user-customized reports, and general questions and answers.

Customers have the freedom to upload/download useful reports, scripts, and other files at times most convenient to them. In addition, they can join groups, be automatically notified when updates are made to their group, when questions are posed by others, when responses are provided to questions, etc.

5.12. **Refresher Training:** Refresher training may be conducted at Accela's office on mutually agreeable dates, if the material was covered and the attendee(s) Attended Customer's initial training. Refresher training does not include training for new Licensed Programs or Customer staff that have not been trained before, which are billable services.

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

5.14. **Service Modification:** Accela has the right to eliminate, add to, or modify these services with 60-days written notice.

**6. Items Not Covered by this License and Support Fee.** The following services will be provided on a fee basis. Appendix A contains prices for license fees, and all services included in Appendix C Statement of Work that are agreed upon as a condition of this Agreement. Services not specifically included in Appendix C can be obtained from Accela after completion and approval of a Professional Service Request (PSR) at the rates identified by Accela.

6.1. **Support Initiated Outside Normal Working Hours:** Accela's normal working hours are 4:00 A.M. to 6:00 P.M., Pacific Time, Monday through Friday, excluding Accela's observed holidays. If Customer requires or initiates service outside these hours, Customer will pay for such support at Accela's prevailing rates.

6.2. **Data Conversion:**

6.3. **Data Correction or Restoration:** Unless caused by Accela's negligence while working on Customer's system.

6.4. **Custom Programming**

6.5. **Software Implementation**

6.6. **Initial and New Staff Training**



6.7. Customer will reimburse Accela for out-of-pocket costs expended on Customer's behalf, unless such costs are caused by Accela's negligence. These can include travel and per diem, parts and supplies, media and reproduction, and long distance calls initiated from Accela to Customer's system. Accela will obtain Customer's prior approval before expending more than \$100.00 per incident.

## **7. Warranty and Limitation of Accela's Liability.**

7.1. Accela warrants that it is the owner or licensee of the Licensed Materials and that it has full power and authority to grant the License granted hereunder, and that as of the effective date of this Agreement, the Software does not infringe on any existing intellectual property. If a third party claims that the Software does infringe, Accela may, at its sole option, secure for Customer the right to continue using the Software or modify the Software so that it does not infringe. Accela will have the sole right to conduct the defense of any legal action and all negotiations for its settlement or compromise.

7.2. Accela warrants that the Licensed Programs will perform substantially in accordance with its then-current Licensed Materials published specifications, at no additional cost to Customer, provided that: (a) the Licensed Programs have not been modified, changed or altered by anyone other than Accela or as authorized by Accela in writing; (b) Customer is operating the then-current version of the Licensed Programs; (c) Customer's computer system is in good operating order and is installed in a suitable operating environment; (d) Customer's computer system configuration used in the operation of the Licensed Programs meets Accela's approved specifications as contained in the Statement of Work, Appendix C; (e) the error or defect is not caused by Customer or its agents, employees or contractors; (f) Customer promptly notifies Accela in writing of the error or defect when it is discovered; (g) all fees then due to Accela have been paid; and (h) Customer is not otherwise in breach of its obligations under this Agreement. In such event, Accela shall use its commercially reasonable efforts to cause the Licensed Programs to perform substantially in accordance with its then-current Licensed Materials published specifications as soon as reasonably practicable under the circumstances.

7.3. If Customer notifies Accela of such error or defect and, after investigation by Accela, Accela determines that such error or defect occurred as a result of Customer not being in compliance with one or more of the reasons listed in Section 7.2 above, then Customer shall reimburse Accela at Accela's then prevailing rates for all costs incurred in investigating such error or defect.

7.4. 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 ACCELA TO CLIENT IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS AN EXPRESS LIMITATION OF LIABILITY, CLIENT'S SOLE AND EXCLUSIVE REMEDIES AND ACCELA'S ONLY OBLIGATIONS UNDER THE WARRANTIES SET FORTH ABOVE AND THIS AGREEMENT IS TO CAUSE THE LICENSED PROGRAMS TO OPERATE SUBSTANTIALLY IN ACCORDANCE WITH ACCELA'S THEN-CURRENT LICENSED MATERIALS OR TO CORRECT THE THEN-CURRENT LICENSED MATERIALS AT ACCELA'S SOLE AND UNFETTERED DISCRETION.

7.5. ACCELA DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE LICENSED PROGRAMS SHALL MEET CLIENT'S REQUIREMENTS OR SHALL OPERATE IN COMBINATION WITH OTHER SOFTWARE OR SYSTEMS WHICH CLIENT 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 ACCELA. ACCELA PROVIDES NO WARRANTY WHATSOEVER FOR ANY THIRD-PARTY HARDWARE OR SOFTWARE PRODUCTS. IF A THIRD-PARTY PRODUCT IS SUPPLIED BY

ACCELA, NO SUPPORT FOR ANY THIRD-PARTY PRODUCT IS PROVIDED, UNLESS AN ADDENDUM IS ATTACHED HERETO, IDENTIFYING THE PRODUCT AND SPECIFYING THE TERMS AND CONDITIONS OF ANY SUPPORT. THIRD-PARTY APPLICATIONS WHICH UTILIZE OR RELY UPON THE APPLICATION SERVICES MAY BE ADVERSELY AFFECTED BY REMEDIAL OR OTHER ACTIONS PERFORMED PURSUANT TO THIS AGREEMENT.

7.6. TO THE EXTENT NOT OFFSET BY ITS INSURANCE COVERAGE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, IN NO EVENT WILL ACCELA'S CUMULATIVE LIABILITY FOR ANY GENERAL, INCIDENTAL, SPECIAL COMPENSATORY, OR PUNITIVE DAMAGES WHATSOEVER SUFFERED BY CLIENT OR ANY OTHER PERSON OR ENTITY EXCEED THE FEES PAID TO ACCELA BY CLIENT DURING THE TWELVE (12) CALENDAR MONTHS IMMEDIATELY PRECEDING THE CIRCUMSTANCES WHICH GIVE RISE TO SUCH CLAIM(S) OF LIABILITY, EVEN IF ACCELA OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES .

7.7. **General Indemnification.**

7.7.1. Any obligation by Accela to defend or indemnify Customer shall be conditioned per Customer doing all of the following:

7.7.1.1. Notifying Accela of the claims, damages, losses and/or expenses in writing within a reasonable period of time, such that Accela suffers no prejudice to its rights;

7.7.1.2. Giving Accela the right to control and direct the defense and settlement of that action;

7.7.1.3. Making no compromise, settlement or admission of liability; and

7.7.1.4. Providing reasonable assistance and cooperates in the defense of that action.

7.7.2. Accela'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:

7.7.2.1. Any modification of the EnvisionConnect software other than by Accela, or the combination of the software with non-Accela software or any hardware that fails to comply with the EnvisionConnect hardware and software requirements;

7.7.2.2. Customer's use of other than the latest release of the EnvisionConnect software if Customer is informed that a claim, suit or proceeding can be avoided by use of the latest release;

7.7.2.3. Any use of the EnvisionConnect software not authorized by this Agreement; or

7.7.2.4. Customer may not make any form of derivative work from the Software, although Customer is permitted to develop additional or alternative functionality for the Software using tools and/or techniques licensed to Customer by Accela.

8. **Dispute Resolution.** This Agreement is governed by the laws of the State of California. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration will be Santa Clara County, California. Either party may apply to the arbitrator for injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy

under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. Each party will initially bear its own expenses and an equal share of the costs of the arbitration, but the prevailing party may be awarded its expenses, reasonable attorneys' fees, and costs. The failure of either party to object to a breach of this Agreement will not prevent that party from thereafter objecting to that breach or any other breach of this Agreement

**9. Customer Responsibilities.** Customer is responsible for the following:

9.1. Timely payment of Accela invoices.

9.2. Use of Accela-hosted test database, prior to installing any enhancements, Versions, or Licensed Programs. This shall include testing of any changes made by the Customer, including but not limited to:

- Reports
- Page Layouts
- Support Codes
- Configurations

9.3. Provision of appropriate operating environment for Customer's computer system, Customer employees, and Accela staff when at Customer location.

9.4. Provision of knowledgeable, competent operators with an understanding of Customer's operations.

9.5. Scheduled training to properly prepare Customer's staff to use Licensed Programs.

9.6. Notifying Accela of a problem as soon it appears.

**10. Version and Module Upgrades.**

10.1. Accela will periodically make Licensed Programs upgrades and enhancements available to Customer as they are generally released. Accela will provide the necessary instructions and software tools so Customer can install the upgrades and modifications.

10.2. Accela will test each new Version in beta prior to releasing the software to Customer. Customer will be provided a test environment in which new Versions will be installed prior to the release of a production Version.

10.3. Customer will maintain its system at the current release level of the Licensed Programs. Ninety (90) days after the release of a new Licensed Programs Version, Accela will not be obligated to maintain prior Versions. Accela will have the sole discretion to decide if new Licensed Programs are a no charge upgrade, a no charge enhancement, or a billable offering. Billable offerings are optional, and Customer will not be required to purchase them to maintain the current release level.

**11. Early Termination.**

11.1. Either party may terminate this Agreement for a material breach of this Agreement, provided that the party in default has not cured or corrected such breach within thirty (30) days of receiving notice of such breach from the non-breaching party. Such termination may be in addition to any other rights and remedies the terminating party may have at law or in equity.

11.2. Accela may terminate this Agreement in the event the Licensed Programs and/or Licensed Materials are 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.

**12. Actions Upon Termination.**

12.1. Customer will cease using Licensed Materials immediately upon termination.

12.2. Within thirty (30) days after termination for any reason, Customer will furnish Accela an affidavit certifying that the original and all copies, in whole or in part, of the Licensed Materials have been removed from Customer's hardware and either returned to Accela or destroyed by Customer.

12.3. Customer will pay all amounts due Accela.

12.4. Accela will return to Customer, all Customer data in a usable electronic format.

13. **Accela Staff.** Customer shall not attempt to hire any current or former Accela staff member without prior written consent from Accela.

14. **Access to Customer Systems.** Customer agrees to install such telephone lines, communications software, and communications equipment necessary to allow remote access to Customer's computer system. This access will be used to provide technical support and problem resolution. Customer shall install its own security measures to prevent unauthorized access. Customer shall be responsible for all expenses associated with obtaining and installing such telephone lines and communication equipment. Accela shall provide Customer with the appropriate communication software at no additional cost. In the event Accela has to access Customer's system remotely, Customer shall reimburse Accela for the cost of the telephone call.

15. **Notice.** Any notice, request, demand, consent, or other communications provided or permitted hereunder shall be in writing and given by personal delivery, transmitted by facsimile, or sent by ordinary mail, postage paid, addressed to the party for which it is intended at its address as follows:

For Accela:

Attention: Legal Department  
2633 Camino Ramon, Suite 500  
San Ramon, CA 94583

Phone: 925-659-3200  
Fax: 925-407-2722  
E-mail: DG\_Notices@accela.com

For Customer:

Snohomish Health District  
3020 Rucker Ave,  
Everett, WA 98201

Phone: (425) 339-5200

16. **General.**

16.1. **Confidentiality.** The parties agree to keep confidential all information obtained or learned during the course of furnishing and receiving services under this Agreement, and for two (2) years following any termination or expiration of this Agreement (“Confidentiality Term”), and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided. During the Confidentiality Term, the parties agree to protect the confidentiality of the other party’s confidential information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect confidential information.

16.2. **Publicity.** During the term of this Agreement, including the term of any amendment hereto, Accela may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the Accela product(s) and services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on Accela web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of Accela's products or services without Customer's prior written authorization.

16.3. Any clause of this Agreement found to be unenforceable shall be severed from this Agreement and the remainder of the Agreement shall remain in full force and effect.

16.4. Any waiver of any clause of this Agreement shall not constitute a subsequent waiver of that clause or any other clause. Failure or delay of either party to enforce compliance with any clause shall not constitute a waiver of such clause.

16.5. This Agreement shall be governed by California law, and the court of competent jurisdiction shall be in Santa Clara, California.

16.6. This Agreement can only be modified in writing as approved by authorized signatories of both parties.

16.7. This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of the parties. Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets.

16.8. Unless otherwise provided herein, Accela may utilize third parties to provide certain services, products or licenses.

16.9. The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.

16.10. The following provisions will survive the termination or expiration of this Agreement: Appendix A, as to Customer’s obligation to pay any fees accrued or due at the time of termination or expiration; Section 7 and Section 16.

17. **Acceptance of Agreement.** Accela and Customer have caused this Agreement to be executed by their duly authorized representatives on the respective dates entered below:

**ACCELA**

**CUSTOMER**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print

\_\_\_\_\_  
Name) (Print Name)

(Title)

(Title)

Dated: \_\_\_\_\_  
(Month, Day,

Dated: \_\_\_\_\_  
Year) (Month, Day, Year)

SEE ATTACHED ORDER FORM

# Snohomish Health District

## April 18, 2019

Kimberly Brown  
Contractor Revenue Operations  
925-359-3404 x813404  
[kbrown@accela.com](mailto:kbrown@accela.com)

**Software and Services**

SKU	Description	Quantity	Unit Price	Ext. Price
SR75CENVCON0001	EnvisionConnect Monthly License and Support Fee	33	\$ 1,380.00	\$ 45,540.00
SR75CENVREM0001	EnvisionConnect Remote Monthly License and Support Fee	33	\$ 720.00	\$ 23,760.00
SR75CENVONL0001	EnvisionConnect Online (API)	1	\$ 37,000.00	\$ 37,000.00
SR75AENVAFF0001	ASP Hosting Monthly Flat Fee	1	\$ 4,461.00	\$ 4,461.00
SR75AENVTO10001	ASP Hosting Per Inspector Monthly Fee	33	\$ 378.00	\$ 12,474.00
SR75AENVOLL0001	ASP Online Hosting Flat Fee	1	\$ 2,880.00	\$ 2,880.00
<b>Tax will be at current rate at time of invoice</b>				
<b>Annual Period 1/1/19-12/31/19</b>			Sub Total	\$ 126,115.00
SR75CENVCON0001	EnvisionConnect Monthly License and Support Fee	33	\$ 1,449.00	\$ 47,817.00
SR75CENVREM0001	EnvisionConnect Remote Monthly License and Support Fee	33	\$ 756.00	\$ 24,948.00
SR75CENVONL0001	EnvisionConnect Online (API)	1	\$ 38,850.00	\$ 38,850.00
SR75AENVAFF0001	ASP Hosting Monthly Flat Fee	1	\$ 4,684.05	\$ 4,684.05
SR75AENVTO10001	ASP Hosting Per Inspector Monthly Fee	33	\$ 396.90	\$ 13,097.70
SR75AENVOLL0001	ASP Online Hosting Flat Fee	1	\$ 3,024.00	\$ 3,024.00
<b>Tax will be at current rate at time of invoice</b>				
<b>Annual Period 1/1/20-12/31/20</b>			Sub Total	\$ 132,420.75
SR75CENVCON0001	EnvisionConnect Monthly License and Support Fee	33	\$ 1,521.45	\$ 50,207.85
SR75CENVREM0001	EnvisionConnect Remote Monthly License and Support Fee	33	\$ 793.80	\$ 26,195.40
SR75CENVONL0001	EnvisionConnect Online (API)	1	\$ 40,792.50	\$ 40,792.50
SR75AENVAFF0001	ASP Hosting Monthly Flat Fee	1	\$ 4,918.25	\$ 4,918.25
SR75AENVTO10001	ASP Hosting Per Inspector Monthly Fee	33	\$ 416.75	\$ 13,752.59
SR75AENVOLL0001	ASP Online Hosting Flat Fee	1	\$ 3,175.20	\$ 3,175.20
<b>Tax will be at current rate at time of invoice</b>				
<b>Annual Period 1/1/21-12/31/21</b>			Sub Total	\$ 139,041.79
SR75CENVCON0001	EnvisionConnect Monthly License and Support Fee	33	\$ 1,597.52	\$ 52,718.24
SR75CENVREM0001	EnvisionConnect Remote Monthly License and Support Fee	33	\$ 833.49	\$ 27,505.17
SR75CENVONL0001	EnvisionConnect Online (API)	1	\$ 42,832.13	\$ 42,832.13
SR75AENVAFF0001	ASP Hosting Monthly Flat Fee	1	\$ 5,164.16	\$ 5,164.16
SR75AENVTO10001	ASP Hosting Per Inspector Monthly Fee	33	\$ 437.58	\$ 14,440.22
SR75AENVOLL0001	ASP Online Hosting Flat Fee	1	\$ 3,333.96	\$ 3,333.96
<b>Tax will be at current rate at time of invoice</b>				
<b>Annual Period 1/1/22-12/31/22</b>			Sub Total	\$ 145,993.88
SR75CENVCON0001	EnvisionConnect Monthly License and Support Fee	33	\$ 1,677.40	\$ 55,354.15
SR75CENVREM0001	EnvisionConnect Remote Monthly License and Support Fee	33	\$ 875.16	\$ 28,880.43
SR75CENVONL0001	EnvisionConnect Online (API)	1	\$ 44,973.74	\$ 44,973.74
SR75AENVAFF0001	ASP Hosting Monthly Flat Fee	1	\$ 5,422.37	\$ 5,422.37
SR75AENVTO10001	ASP Hosting Per Inspector Monthly Fee	33	\$ 459.46	\$ 15,162.23
SR75AENVOLL0001	ASP Online Hosting Flat Fee	1	\$ 3,500.66	\$ 3,500.66
<b>Tax will be at current rate at time of invoice</b>				
<b>Annual Period 1/1/23-12/31/23</b>			Sub Total	\$ 153,293.58
				Subtotal: \$ 696,865.00
				Tax (TBD):
				<b>Total: \$ 696,865.00</b>



Order Detail	
General Information	
Customer Contact	Jeff Ketchel
Customer Address	3020 Rucker Ave, Everett, WA 98201
Term(s):	1/1/19-12/31/23
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; and</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	<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	Invoicing will happen on an Annual basis

Accounts Payable Contact Information (Required)			
First Name	Judy	Last Name	Chapman
Title			
Phone Number			
Email Address:	<a href="mailto:ichapman@snohd.org">ichapman@snohd.org</a>		
Billing Address			
Delivery Address			
Method of Invoicing	All invoices will be sent electronically to the Email Address provided above unless otherwise specified in Special Invoicing Needs. .		
Special Invoicing Need	Annual Billing		
Purchase Order Reference (Optional)			
<p>If Customer requires PO number on invoices, it <b>must</b> be provided to the right and Customer <b>must</b> provide <u>Accela copy of the PO prior to invoice issuance</u>. If no PO number provided prior to invoice issuance date, invoices issued on this Order Form will be valid without a PO reference.</p>			PO# (If required):

## **Appendix A. Third Party Software**

### **A.1 SAP Crystal Reports**

Crystal Reports is a database report designer and viewer owned by SAP. Accela utilizes Crystal Reports to design “canned” and custom reports that are later distributed with the Licensed Materials. The Licensed Materials includes a server-side report generation component. This is allowed under 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.

- A.1.1 Customer agrees not to modify, disassemble, decompile, translate, adapt or reverse-engineer the Runtime Product or the report file (.RPT) format;
- A.1.2 Customer agrees not to distribute the Runtime Product to any third party;
- A.1.3 Customer agrees not to use the Runtime Product to create for distribution a product that is generally competitive with SAP product offerings;
- A.1.4 Customer 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;
- A.1.5 Customer 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;
- A.1.6 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.

### **A.2 SQL Server.**

Microsoft SQL Server 2008 Standard Edition (or higher) or Microsoft SQL Server 2012 Standard Edition (or higher) is a database management system required by the Licensed Materials.

As an Application Service Provider Accela will host Customer’s database and provides license to Microsoft SQL Server under Microsoft’s Service Provider License Agreement (SPLA). This Microsoft SQL Server license is subject to the following terms.

- A.2.1 Customer agrees not to remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the SQL Server;
- A.2.2 Customer agrees not to reverse engineer, decompile, or disassemble SQL Server, except to the extent that such activity is expressly permitted by applicable law;
- A.2.3 MICROSOFT DISCLAIMS ALL WARRANTIES BY MICROSOFT AND ANY LIABILITY BY MICROSOFT ITS AFFILIATS OR SUPPIERS FOR ANY DAMAGE, WHETHER DIRECT OR INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OF THE SOFTWARE SERVICES PROVIDED THROUGH THIS AGREEMENT.

- A.2.4 All support SQL Server will be provided by Accela. Accela must enable the automatic update feature in the SQL Server to automatically download and install critical updates to the SQL Server.
- A.2.5 Customer agrees not to market, distribute, sublicense, lease or rent the SQL Server.
- A.2.6 Customer agrees not to infringe any intellectual property or other rights of Microsoft.
- A.2.7 Accela may disclose Customer user count information as required by the SPLA.