






**TO:** SOUTHERN NEVADA DISTRICT BOARD OF HEALTH     **DATE:** September 26, 2019

**RE:** *Approval of Service Agreement between Southern Nevada Health District and Accela*

**PETITION # 01-20**

**That the Southern Nevada District Board of Health** *approve the Service Agreement between the Southern Nevada Health District (SNHD) and Accela to fund the annual renewal of the License and Support Agreement for maintenance of the Envision Connect software currently used by Environmental Health staff.*

**PETITIONERS:**

**Jason Frame**, *Manager of Information Technology*   
**Chris Saxton**, *Director of Environmental Health*   
**Joseph P. Iser, MD, DrPH, MSc**, *Chief Health Officer* 

**DISCUSSION:**

This sole source justified service agreement is to provide annual license usage and maintenance fees for the Envision Connect software used by Environmental Health staff to perform work activities, including but not limited to: routine inspections, special event inspections, and facility surveys required for permitted establishments.

**FUNDING:**

The Agreement awards \$182,325.28 to Accela by the SNHD Environmental Health Division. These funds are covered by the approved budget.



# Southern Nevada Health District Envision Connect 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**

**C2000012**

This Agreement is entered into between Accela, Inc. ("Accela") with its principal place of business at 2633 Camino Ramon, Suite 500, San Ramon, California 94583, and the Southern Nevada Health District (hereinafter "Customer") with principal place of business at 280 S. Decatur Blvd., Las Vegas, Nevada 89107 (individually "Party", and collectively, "Parties").

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

WHEREAS, pursuant to Nevada Revised Statutes ("NRS") Chapter 439, Customer is the public health authority for Clark County, Nevada, with jurisdiction over all public health matters therein; 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 expressly form part of this Agreement:

<b>Appendix</b>	<b>Description</b>
Appendix A	Volumes, Prices, and Payment Schedule for License Fees
Appendix B	Dates and Term
Appendix C	Statement of Work
Appendix D	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 B, Dates and Term.

1.6. **Anniversary Date.** The term "Anniversary Date" shall mean a specific mutually agreed upon date as defined in Appendix B, Dates and Term.

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.

## **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 backup 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. For the avoidance of doubt, each party shall retain ownership of its respective Confidential Information and its Intellectual Property.

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 timely notify Accela of the unauthorized possession, use or knowledge of any item supplied to Customer pursuant to this Agreement. To the extent permitted by law, Customer is liable to Accela for 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 45 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. Such price increases will be limited to 2% on a year-to-year basis for the first four (4), successive one (1) year renewal years. Additional products may be purchased from Accela at then prevailing license fees. Said additional products shall be subject to the limitations on price increases herein.

4.4. Customer represents and warrants that it is a governmental tax-exempt entity. To the extent permitted by law as applicable to Customer pursuant to its standing as a governmental tax-exempt entity, Customer shall not be responsible for sales and use taxes based upon the sale or delivery of products or services under this Agreement. Customer will provide valid tax exemption certificate(s) for any and all taxes for which Customer is exempt upon execution of this Agreement. Notwithstanding the foregoing, each Party acknowledges it is responsible for knowing the applicable sales and use tax laws, and in the event Accela is required by law to collect or pay any tax, such as sales and use taxes, exclusive of property and income taxes, based upon the sale or delivery of products or services under this Agreement, such tax shall be paid by Customer directly to the taxing agency with proof of payment provided to Accela. This obligation extends retroactively if so accurately assessed by a taxing agency.

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

4.6. Section 6 lists products and services that are not included in the license and support fee. With prior written approval by Customer (such as, for example, an Order Form), fees for Customer's use of these items are due and payable when invoiced.

#### **5. Support Services.** The following services are included in the license and support 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.

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

**5.3.2.** Accela will provide maintenance 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.

**5.3.3.** 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. 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.

**5.4.1.** 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.

**5.4.2.** 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.

**5.5. 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.

**5.6. 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.

**5.7. 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 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 then current 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 written approval before expending more than \$100.00 per incident.

**7. Warranty and Limitation of 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 current rates for documented actual 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 CUSTOMER IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS AN EXPRESS LIMITATION OF LIABILITY, CUSTOMER'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 BY ACCELA EXCEPT AS IT PERTAINS TO THE THIRD PARTY PRODUCT INTEGRATION INTO THE LICENSED PROGRAMS AND 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 A PARTY'S CUMULATIVE LIABILITY FOR ANY GENERAL, INCIDENTAL, SPECIAL COMPENSATORY, OR PUNITIVE DAMAGES WHATSOEVER SUFFERED BY THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY EXCEED THE FEES PAID TO ACCELA BY CUSTOMER DURING THE TWELVE (12) CALENDAR MONTHS IMMEDIATELY PRECEDING THE CIRCUMSTANCES WHICH GIVE RISE TO SUCH CLAIM(S) OF LIABILITY, EVEN IF THE LIABLE PARTY OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES .

**7.7. General Indemnification.**

7.7.1. Any obligation by a Party ("Indemnitor") to defend or indemnify the other Party ("Indemnitee") shall be conditioned upon Indemnitee's performance of all of the following:

7.7.1.1. Notifying Indemnitor of the claims, damages, losses and/or expenses in writing within a reasonable period of time, such that Indemnitor 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. Subject to 7.7.1.2, In all matters as to which indemnification is or may be available to the Indemnatee, Indemnatee shall be free to choose and retain its own counsel, and bear the expenses of such counsel.
- 7.7.3. 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:
  - 7.7.3.1. 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;
  - 7.7.3.2. 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;
  - 7.7.3.3. Any use of the EnvisionConnect software not authorized by this Agreement; or
  - 7.7.3.4. 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 Nevada, notwithstanding conflict of laws principles, with Clark County, Nevada, as the exclusive venue of any action or proceeding arising out of or related to this this Agreement. 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 Clark County, Nevada. 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. The prevailing party will have the right to seek 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.

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

- 8.1. Timely payment of Accela invoices.
- 8.2. 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

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

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

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

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

8.7. Backing up files and Licensed Programs daily, or whenever they change, and keeping them in a secure place.

#### **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.

11.3. This Agreement is subject to the availability of funding and shall be terminated immediately if for any reason state and/or federal funding ability, or grant funding budgeted to satisfy this Agreement is withdrawn, limited or impaired.

#### **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.

**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 Southern Nevada Health District  
Attention: Legal Department  
280 S. Decatur Blvd  
Las Vegas NV 89107

**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. Notwithstanding the foregoing, the Parties acknowledge Customer is a public entity subject to Nevada's Public Records Act pursuant to NRS Chapter 239. Accordingly, documents, including this Agreement, may be open to public inspection and copying; provided however, that Accela shall have the right to timely object or dispute the production of any such documents, agreements or other material in the appropriate court, and in the event of such objection Customer shall not produce any such documents, agreements, or other materials until a determination is made by a court of competent jurisdiction.

**16.2. Publicity.** During the term of this Agreement, including the term of any amendment hereto, Accela may not use Customer's name, mark, logo, design or other Customer symbol for any purpose without Customer's prior written consent. Accela agrees that Customer, in its sole discretion, may impose

restrictions on the use of its name and/or logo. Customer retains the right to terminate, with or without cause, Accela's right to use Customer's name and/or logo.

**16.3. Mutual Cooperation.** The Parties shall fully cooperate with one another, and shall take any additional acts, or sign any additional documents as is reasonably necessary, appropriate, or convenient to achieve the purposes of this Agreement.

**16.4. Status of Parties; Independent Contractor.** Accela will provide Services to Customer under this Agreement as an independent contractor. Nothing in this Agreement or the relationship between Accela and Customer will be construed to create a joint venture or partnership, or the relationship of principal and agent, or employer and employee, or to create a co-employment or joint employer relationship.

**16.5. Statement of Eligibility.** Each Party acknowledges to the best of its respective knowledge, information, and belief, and to the extent required by law, neither it nor any of its employees/contractors is/are: i) currently excluded, debarred, suspended, or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; and ii) has/have not been convicted of a federal or state offense that falls within the ambit of 42 USC 1320a-7(a).

**16.6. Non-Discrimination.** As Equal Opportunity Employers, the Parties have an ongoing commitment to hire, develop, recruit and assign the best and most qualified individuals possible. The Parties employ employees without regard to race, sex, color, religion, age, ancestry, national origin, marital status, status as a disabled veteran, or veteran of the Vietnam era, disability, sexual orientation or gender identity or expression. The Parties likewise agree that each will comply with all state and federal employment discrimination statutes, including but not limited to Title VII, and the American with Disabilities Act.

**16.7.** 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.

**16.8.** 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.

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

**16.10.** 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.

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

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

**16.13.** 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, INC.

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

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

Its \_\_\_\_\_  
(Title)

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

SOUTHERN NEVADA HEALTH DISTRICT

By: Joseph P. Iser  
(Signature)

Joseph P. Iser, MD, DrPH, MSc  
(Print Name)

Its Chief Health Officer  
(Title)

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

APPROVED AS TO FORM:

Heather Anderson-Fintak  
Heather Anderson-Fintak, Esq.  
Associate General Counsel  
Southern Nevada Health District

**Appendix B. Dates and Term**

This Agreement shall become effective as specified below ("Effective Date") or when Accela provides the Licensed Programs or services hereunder, whichever is earlier.

The month and day of the Effective Date shall determine the anniversary date (hereinafter "Anniversary Date").

This Agreement shall have a term of 1 year, 9/1/19 to 8/31/20

In the event the Agreement is not terminated, as specified herein, it shall be renewed for four successive one year terms on the same conditions in effect at the conclusion of the ending term. The per-unit pricing during said additional term will be the same as the prior term's annual fees unless Accela notifies Customer otherwise not less than sixty (60) calendar days prior to the end of said prior term. Any price increase will be effective at the start of the renewal term. No such price increase will exceed two percent (2%) of the prior term's annual pricing.

Either party may terminate this Agreement at the end of the initial or any successive term by giving the other party at least sixty (60) days prior written notice.

**Milestone Summary**

<b>Milestone</b>	<b>Date</b>
Effective Date:	9/1/19
Anniversary Date	9/1/19
Agreement Term Begins	9/1/19
Agreement Term Ends	8/30/20

**Appendix C. Statement of Work**

**Page intentionally left blank for insertion of SOW details. SOW is presently not applicable.**



## **Appendix D. Third Party Software**

### **D.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.

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

### **D.2 Microsoft 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.