

RESOLUTION NO. 2076

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF OREGON AND THE CITY OF TROUTDALE FOR PROVIDING A BUILDING DEPARTMENT SOFTWARE SYSTEM AT NO COST TO THE CITY

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Oregon Revised Statute 455.095 provides that the State of Oregon Department of Consumer and Business Services shall develop and implement a system that provides electronic access to building permitting information.
2. The statute requires the DCBS to make the software system available to all municipalities in the State of Oregon to administer their building inspection programs.
3. This statewide software system is to be financed entirely by a building permit surcharge that is mandated by the State of Oregon.
4. The mandated surcharge for funding this program must be collected by the City of Troutdale when issuing permits whether or not we adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The Mayor is authorized to sign an Intergovernmental Agreement with The State of Oregon which is in substantial conformity to that which is attached as Exhibit A to the staff report.


Section 2. This resolution is effective immediately upon adoption.


YEAS: 6

NAYS: 0

ABSTAINED: 0


Mayor Jim Kight


Date


Sarah Skroch, Deputy City Recorder
Adopted: November 9, 2010

INTERGOVERNMENTAL AGREEMENT
ePermit System and Services

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this 1 day of September 2010 (the "Effective Date") by and between The State of Oregon, acting by and through the Department of Consumer and Business Services ("DCBS") and the City of Troutdale ("Jurisdiction"), a political subdivision of the State of Oregon. DCBS and the Jurisdiction may collectively be referred to herein as the Parties and individually as the Party. The Parties are authorized to enter into this Agreement under ORS Chapter 190 and ORS 455.095.

DCBS:

Lori Lee Graham
ePermitting Manager
1535 Edgewater Street NW
PO Box 14470
Salem, OR 97309
FAX (503)378-2322

Jurisdiction:

Jim Kight
Mayor
City of Troutdale
105 SE Kibling Ave
Troutdale, OR 97068
FAX: (503) 667-0524
FEIN: 93-6002268

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RECITALS

- A. Oregon Revised Statute ORS 455.095 provides that DCBS shall develop and implement a system that provides electronic access to building permitting information. The statute also requires DCBS to make the system accessible for use by municipalities in carrying out the building inspection programs administered and enforced by the municipalities.
- B. The Department of Administrative Services, State Procurement on behalf DCBS issued a Request for Proposal (RFP) for a statewide ePermit system and associated products and services ("ePermit System"). Accela, Inc. was the successful proposer. On or about August 8, 2008, DCBS and Accela, Inc. entered into a contract ("ePermit contract") by which Accela, Inc. licensed to DCBS ePermitting system software, an IVR system and provided related configuration, implementation and hosting services (collectively the "ePermit System")
- C. The ePermit contract provided that the ePermit System and related Services would be available to municipalities ("Participating Jurisdictions").
- D. Jurisdiction has requested that DCBS provide access to the ePermitting System and related Services to Jurisdiction and to implement the Jurisdiction as a Participating Jurisdiction as set forth in the ePermitting contract.
- E. DCBS is willing, upon the terms of and conditions of this Agreement, to provide access to Jurisdiction to the ePermitting System and related Services and to implement Jurisdiction as provided herein.

NOW, THEREFORE, in consideration of the foregoing premises and other good and

valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS.

- 1.1. As used in this Agreement, the following words and phrases shall have the indicated meanings.
- 1.2. "Agreement" means this Intergovernmental Agreement.
- 1.3. "ePermitting Contract" has the meaning set forth in Recital B and includes all amendments thereto.
- 1.4. "ePermit System" means the entire system including the ePermitting software licensed implemented and configured pursuant to the ePermit contract and related Services including hosting and IVR.
- 1.5. "Jurisdiction" has the meaning set forth in the first paragraph of this Agreement.

2. TERM, RENEWAL AND MODIFICATIONS.

- 2.1. Term. This Agreement is effective, and will be considered fully executed, upon signature by both parties, and shall remain in effect until termination of this Contract as provided herein. Unless otherwise terminated as provided herein, this Contract will be in effect for the period that Jurisdiction administers and enforces a building inspection program. This Agreement will automatically renew in the event that the Jurisdiction's program assumption is renewed for an additional period.
- 2.2. Agreement Modifications. Notwithstanding the foregoing, or, any other provision of the Agreement, DCBS may propose a modified Agreement or new intergovernmental agreement for Jurisdiction access to the ePermit System. DCBS will propose such modified Agreement or new intergovernmental agreement with at least 60 days written notice prior to expiration of the Jurisdiction's current program assumption period. The new intergovernmental agreement or modified Agreement will be effective on the effective date of the renewal of Jurisdiction's program assumption. If the parties cannot agree to the new intergovernmental agreement or modified Agreement, this Agreement will terminate effective on the renewal date of Jurisdiction's program assumption. Additionally, during the term of this Agreement, DCBS may propose modifications to this Agreement and which will become effective upon mutual agreement by the parties in accord with section 19 of this Agreement.

3. PERFORMANCE AND DELIVERY.

3.1. Responsibilities of DCBS.

- 3.1.1. DCBS shall use its best efforts to provide Jurisdiction access to the

ePermit System and related Services. DCBS shall use its best effort to provide the Jurisdiction with satisfactory access on a parity with all other jurisdictions implemented by DCBS to the ePermit System.

3.1.2. DCBS will implement the Jurisdiction using the process according to the ePermitting Implementation Methodology set forth in Exhibit B. In the event that a Work Order Contract is used to implement a specific city or county, a copy of that agreement shall be provided in Exhibit E.

3.1.3. Upon implementation, Jurisdiction will have access to the System and the functionality as described in the ePermit contract and determined during the implementation process.

3.1.4. DCBS will provide technical support for the ePermit program. Support shall be provided to Jurisdiction 7:00 a.m. to 4:00 p.m. The general support structure shall be as follows:

3.1.4.1. State ePermitting team provides technical support to participating city or county.

3.1.4.2. Accela provides technical support to State ePermitting team.

In the event that the State team is unable to communicate a solution to the participating city or county, the State team will facilitate communication between Accela and participant.

3.2. Responsibilities of Jurisdiction.

3.2.1. Jurisdiction agrees to the requirements of Exhibit A.

3.2.2. Jurisdiction shall provide the resources required in the Implementation Methodology set forth in Exhibit B.

3.2.3. Jurisdiction agrees to abide by the terms and conditions of the Software License set forth in Exhibit C.

4. REPRESENTATIONS AND WARRANTIES.

4.1 Representations of Jurisdiction. Jurisdiction represents and warrants to DCBS as follows:

4.1.1. Organization and Authority. Jurisdiction is a political subdivision of the State of Oregon (or an intergovernmental entity formed by political subdivisions of the State of Oregon under ORS Chapter 190) duly organized and validly existing under the laws of the State of Oregon. Jurisdiction has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder. Jurisdiction has assumed and administers a building inspection program under ORS 455.148 to ORS 455.153.

4.1.2. Due Authorization. The making and performance by Jurisdiction of this

Agreement (1) have been duly authorized by all necessary action of Jurisdiction and (2) do not and will not violate any provision of any applicable law, rule, and regulation.

- 4.1.3. Binding Obligation. This Agreement has been duly executed and delivered by Jurisdiction and constitutes a legal, valid and binding obligation of Jurisdiction, enforceable according to its terms.
- 4.1.4. Jurisdiction has reviewed the ePermit contract and ePermit System and is knowledgeable of the ePermit system functionality and performance and has entered into this agreement based on its evaluation of the ePermit Contract and the ePermit System

4.2. Representations and Warranties of DCBS. DCBS represents and warrants to Jurisdiction as follows:

- 4.2.1. Organization and Authority. DCBS is an agency of the state government and DCBS has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- 4.2.2. Due Authorization. The making and performance by DCBS of this Agreement (1) have been duly authorized by all necessary action of DCBS and (2) do not and will not violate any provision of any applicable law, rule, and regulation.
- 4.2.3. Binding Obligation. This Agreement has been duly executed and delivered by DCBS and constitutes a legal, valid and binding obligation of DCBS, enforceable according to its terms.
- 4.2.4. Performance Warranty. DCBS will use its best efforts to provide Jurisdiction access to the ePermit System and implement the Jurisdiction according to the ePermit contract and Exhibit B. Notwithstanding the foregoing, Jurisdiction understands and agrees that the ePermit System is composed of software and services provided by third parties and DCBS has no responsibility to Jurisdiction for the functionality or performance of the ePermit System.

4.3. The warranties set forth above are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

5. ACCESS TO RECORDS AND FACILITIES.

- 5.1. Records Access. DCBS, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of the Jurisdiction that are directly related to this Agreement, for the purpose of making audits, examinations, excerpts, copies and transcriptions.
- 5.2. Retention of Records. Jurisdiction shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law,

following the termination of this Agreement.

5.3. Public Records. Jurisdiction shall be deemed the Custodian for the purposes of public records requests regarding requests related to Jurisdiction's building inspection program.

6. JURISDICTION DEFAULT. Jurisdiction shall be in default under this Agreement upon the occurrence of any of the following events:

6.1. Jurisdiction fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein.

6.2. Any representation, warranty or statement made by Jurisdiction herein is untrue in any material respect when made.

7. DCBS DEFAULT. DCBS shall be in default under this Agreement upon the occurrence of any of the following events:

7.1. DCBS fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or

7.2. Any representation, warranty or statement made by DCBS herein is untrue in any material respect when made.

8. TERMINATION.

8.1. Jurisdiction Termination. Jurisdiction may terminate this Agreement in its entirety as follows:

8.1.1. For its convenience, upon at least six calendar months advance written notice to DCBS, with the termination effective as of the first day of the month following the notice period;

8.1.2. Upon 30 days advance written notice to DCBS, if DCBS is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as Jurisdiction may specify in the notice; or

8.1.3. Immediately upon written notice to DCBS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that Jurisdiction no longer has the authority to meet its obligations under this Agreement.

9. DCBS TERMINATION. DCBS may terminate this Agreement as follows:

9.1. For its convenience, upon at least six calendar months advance written notice to Jurisdiction, with the termination effective as of the first day of the month following the notice period.

9.2. Upon termination of the ePermit Contract with such reasonable notice to Jurisdiction as feasible under the terms of the ePermit Contract.

9.3. Immediately upon written notice to Jurisdiction if Oregon statutes or federal

laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that DCBS no longer has the authority to meet its obligations under this Agreement.

- 9.4. Upon 30 days advance written notice to Jurisdiction, if Jurisdiction is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as DCBS may specify in the notice.
- 9.5. Immediately, in the event that Jurisdiction no longer administers and enforces a building inspection program.

10. EFFECT OF TERMINATION.

- 10.1. No Further Obligation. Upon termination of this Agreement in its entirety, DCBS shall have no further obligation to provide access to the ePermit System and related Services to Jurisdiction.
- 10.2. Survival. Termination or modification of this Agreement pursuant to sections 8 and 9 above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination, Jurisdiction shall immediately cease all activities under this Agreement, unless expressly directed otherwise by DCBS in the notice of termination.
- 10.3. Minimize Disruptions. If a termination right set forth in section 8 or 9 is exercised, both parties shall make reasonable good faith efforts to minimize unnecessary disruption or other problems associated with the termination.
- 10.4. Jurisdiction Data. Jurisdiction may obtain a copy of data related to its building inspection program.

11. NOTICE. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Jurisdiction or DCBS at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against DCBS, any notice transmitted by facsimile must be confirmed by telephone notice to DCBS's Office of Contracts and Procurement as set forth below. To be effective against Jurisdiction, any notice transmitted by facsimile must be confirmed by telephone notice to Jurisdiction's responsible party as agreed upon by jurisdiction and DCBS. Any communication or notice given by personal delivery shall be effective when actually delivered.

12. SEVERABILITY. The parties agree that if any term or provision of this

Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

- 13. COUNTERPARTS.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- 14. GOVERNING LAW, CONSENT TO JURISDICTION.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between DCBS (and/or any other agency or department of the State of Oregon) and Jurisdiction that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court in the State of Oregon of proper jurisdiction. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. JURISDICTION, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- 15. COMPLIANCE WITH LAW.** The parties shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement. All employers, including DCBS and Jurisdiction, that employ subject workers who provide Services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
- 16. ASSIGNMENT OF AGREEMENT, SUCCESSORS IN INTEREST.** The parties agree there will be no assignment or delegation of the Agreement, or of any interest in this Agreement, unless both parties agree in writing. The parties agree that no services required under this Agreement may be performed under subcontract unless both parties agree in writing. The provisions of this Agreement shall be binding upon and shall inure to the parties hereto, and their respective successors and permitted assignees.
- 17. NO THIRD PARTY BENEFICIARIES.** DCBS and Jurisdiction are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 18. WAIVER.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.

- 19. AMENDMENT.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required by the Department of Administrative Services and Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Jurisdiction, by signature of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
- 20. HEADINGS.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
- 21. CONSTRUCTION.** This Agreement is the product of extensive negotiations between DCBS and representatives of Jurisdiction. The provisions of this Agreement are to be interpreted and their legal effects determined as a whole. An arbitrator or court interpreting this Agreement shall give a reasonable, lawful and effective meaning to the Agreement to the extent possible, consistent with the public interest.
- 22. INDEPENDENT CONTRACTOR.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that neither party is an officer, employee, or agent of the other as those terms are used in ORS 30.265 or otherwise.
- 23. LIMITATION OF LIABILITY.**
- 23.1. Jurisdiction agrees that DCBS shall not be subject to any claim, action, or liability ARISING IN ANY MANNER WHATSOEVER OUT OF ANY ACT OR OMISSION, INTERRUPTION, OR CESSATION OF ACCESS OR SERVICE UNDER THIS AGREEMENT. THE STATE SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DIRECT, INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES SUSTAINED BY THE POLITICAL SUBDIVISION, INCLUDING, BUT NOT LIMITED TO, DELAY, INTERRUPTION OF BUSINESS ACTIVITIES, OR LOST RECEIPTS THAT MAY RESULT IN ANY MANNER WHATSOEVER FROM ANY ACT OR OMISSION, INTERRUPTION, OR CESSATION OF SERVICE.
- 23.2. EXCEPT FOR LIABILITY ARISING UNDER SECTION 26 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.
- 24. FORCE MAJEURE.** Neither DCBS nor Jurisdiction shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of DCBS or Jurisdiction, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

25. TIME IS OF THE ESSENCE. Time is of the essence in the performance of all under this Agreement.

26. INDEMNITY

- 26.1. Indemnification by Jurisdiction. Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and Article XI, Section 9 of the Oregon Constitution, the Jurisdiction shall indemnify, defend, and hold harmless the State of Oregon and the Department of Administrative Services, its officers, divisions, agents, employees, and members from all claims, suits, or actions of any nature arising out of the negligent acts or omissions of the Jurisdiction, its officers, contractors, agents or employees under this agreement.
- 26.2. Indemnification by DCBS. Subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and Article XI, Section 7 of the Oregon Constitution, State of Oregon shall indemnify the Jurisdiction and hold the Jurisdiction harmless from and against liability for damage to life, person or property arising solely from the negligence of the State of Oregon and the Department Of Administrative Services, its officers, division, agents, employees, and members in providing services to the Jurisdiction under this Agreement. Provided, the State of Oregon Shall not be required to indemnify and hold Jurisdiction harmless from liability arising in any manner from the acts or omissions of Jurisdiction, its officers, contractors, agents, or employees.
- 26.3. Control of defense and settlement. Jurisdiction shall have control of the defense and settlement of any claim that is 26.1; however, neither Jurisdiction nor any attorney engaged by Jurisdiction shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall Jurisdiction settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Jurisdiction is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.
- 26.4. Responsibility for own acts. Except as specifically provided in this Agreement, each party shall be responsible, to the extent required by law (including the Oregon Tort Claims Act, ORS 30.260-30.300) only for the acts, omissions or negligence of its own officers, employees or agents.

27. AGREEMENT DOCUMENTS IN ORDER OF PRECEDENCE. This Agreement consists of the following documents that are listed in descending order of precedence:

This Agreement less all exhibits;


Exhibit A - Jurisdiction Obligations
Exhibit B - Implementation Methodology
Exhibit C - ePermit License Agreement
Exhibit D - ePermit Contract (not attached, but made available
to Jurisdiction Exhibit E - (Work Order, if applicable)

All attached and referenced exhibits are hereby incorporated by reference.

28. MERGER CLAUSE. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of DCBS to enforce any provision of this Agreement shall not constitute a waiver by DCBS of that or any other provision.


**JURISDICTION, BY EXECUTION OF THIS AGREEMENT, HEREBY
ACKNOWLEDGES THAT JURISDICTION HAS READ THIS CONTRACT,
UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND
CONDITIONS.**

A. Jurisdiction

By:  Date: 10-10-10
Printed Name: Jim Kight

Title: Mayor, City of Troutdale

B. State of Oregon, Acting by and through its Department of Consumer and Business Services

By:  Date: 11-23-10

Printed Name: Patrick M. Allen, or delegate

Title: Interim Administrator, Building Codes Division

C. State of Oregon, acting by and through its Department of Consumer and Business Services

By:  Date: 11/30/10

Printed Name: Sarah L. Roth, or delegate

Title: DCBS Procurement Officer

Exhibit A Jurisdiction Obligations

Jurisdiction Software

As part of the state hosted system, any software being used by Jurisdiction to support either the building permitting system or any supplemental products being purchased from Accela, must be compatible with the Accela product.

Permit Numbering Scheme.

As a full service participant, Jurisdiction agrees to include the three digit prefix to all permits covered by and processed through ePermitting system. Permits for any supplemental products purchased through Accela, hosted in the State of Oregon environment and being serviced through the State of Oregon ePortal must also use the three-digit prefix in the permit number. Permits for supplemental products purchased through Accela that will not be hosted or maintained on the Oregon platform and that are not serviced through the State of Oregon ePortal are not required to use the three-digit prefix.

Status and Result Codes.

All status and result codes such as inspections, plan review, permit issuance status will be pursuant to a statewide uniform system. Jurisdiction shall only use the uniform status and result codes.

Inspection Codes.

Inspection types for code required inspections must be consistent throughout the state. Unique inspection types must be requested through and assigned by the ePermitting staff.

Supplemental Products Purchased by Jurisdiction through Accela.

Any supplemental product such as, but not limited to, Land Use, Enforcement, Licensing or other services, are licensed directly to Jurisdiction by Accela. Support services for the supplemental products fall outside of the scope of this Intergovernmental Agreement and are therefore provided through direct agreement with Accela or other service provider. Installation of supplemental products onto the State hosted servers cannot occur before the State ePermitting team begins active development of the building permitting module.

Version (Product) updates.

Migration from one product version of Accela Automation to another product version will be regulated and coordinated through DCBS. Supplemental products will be required to migrate to the same version of the product at the same time as the product version for the building product module.

**Exhibit B
Implementation Methodology**



Your *link*
to building Oregon

**Full Service ePermitting
Project Approach and
Methodology**

Version 1.2

December 23, 2009



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Document Control

Date	Author	Version	Change Reference
		1.0	Original
12/22/2009	Ean Darbo	1.1	Edits to Implementation Methodology Definitions
12/23/2009	Lori Graham	1.2	Formatting edits



Overview

The State of Oregon (State) has partnered with Accela to deliver a new software package which will better serve the construction community, cities, and counties (Jurisdictions) across the State. All ePermitting services will be hosted, with internet access to participating jurisdictions. Three levels of service will be offered: Basic Service (Quick Permits), Full Service (COTS/Complete), and Integrated Service.

The Full Service level will include automated building permit management, a public user web portal, telephone voice response inspection scheduling system (IVR), wireless inspection module for field use, integration to geographic information systems (GIS), and the potential to interface to other existing 3rd party systems such as Financial or Document Management systems.

Each Jurisdiction that chooses to participate in the ePermitting program will receive implementation services designed to assist with the implementation of the program. The implementation team will typically be comprised of State implementation staff in addition to a Jurisdiction's own information technology staff.

In advance of every implementation, a Jurisdiction will complete a business analysis of their current system thereby expediting the process. The level of support required by the State will vary from jurisdiction to jurisdiction depending on the in-house technology personnel expertise. The types of services that may typically be provided include:

- Documentation and analysis of current business practices
- CAP type (permit) and workflow development
- IVR set-up
- Conversion of existing data
- Setup of document management system
- Training of jurisdictional staff

The Full Service implementation will occur across six stages: Project Initiation, Analysis, Configuration; Build, Readiness, Testing, and Deploy. This implementation methodology provides a scalable and consistent manner for all required activities to occur. Detailed discussion of this six stage approach is included below, and includes information on what a Full Service Jurisdiction can expect in terms of objectives, activities, and deliverables. This staged approach includes periodic review of our Deployment Strategy to ensure a successful launch.

Each project stage is marked with entry conditions and exit conditions; status meetings, sign-off requirements, and detailed documentation of these conditions eliminate the potential of oversight and error.



Description of Methodology

The implementation period is a highly critical time; it sets the tone for the Jurisdiction's ongoing use of the Accela Automation system. A thorough and well-managed implementation will result in the Jurisdiction's successful use of the solution.

To confirm that our implementation is on time and within budget, the State of Oregon implementation team will be on site and will lead ongoing project management services, in partnership with Jurisdiction staff. Together, the collective project team (State of Oregon and Jurisdiction project staff) will plan and monitor execution of the project in accordance with deliverables outlined in the Statement of Work.

A successful implementation is vital to the Jurisdiction's long term operation of Accela Automation. In addition to configuring and installing the system, the implementation period is the time when administrators, users, and power users are trained in their use of the system. This is also that time when Jurisdiction business processes are analyzed, optimized and adjusted to leverage the full benefit of Accela Automation.

Although levels of staff involved with each implementation vary, based on the number of users, the amount of data to be converted, the modules selected, and the level of configuration required, we have included estimated requirements regarding the project team participation later in this document.

Success Factors

Project implementation will be a collaborative effort between the State project team and the Jurisdiction project team. Within this process, we define three key factors that will impact our success:

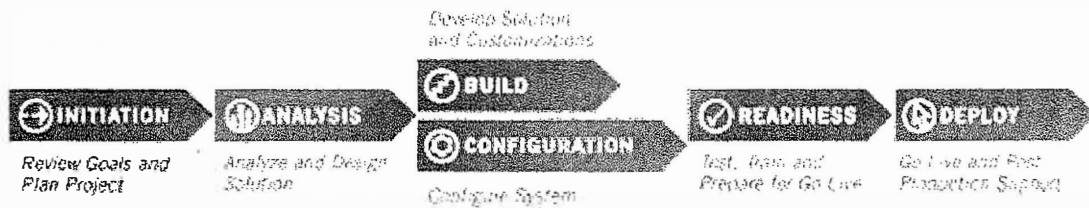
- 1. Knowledge Transfer** - It is critical that Jurisdiction personnel participate in the analysis, configuration and deployment of Accela Automation. The State team will transfer knowledge to Jurisdiction staff, empowering system administrators, power users, and users to be self-sufficient in its support of Accela Automation. These individuals will serve as the Jurisdiction's liaison to the State support team, and will work with these support personnel to troubleshoot and resolve any issues that may arise.
- 2. Dedicated Jurisdiction Participation** – Jurisdiction staff, along with the State team, must be actively involved throughout the entire duration of the implementation, within the parameters of their specific project roles. To keep project stakeholders apprised of progress, Project Status Reports will detail participation, or lack thereof, of Jurisdiction and State resources, as well as the corresponding impact(s).

We understand that Jurisdiction staff members have daily responsibilities, and we will work closely with Jurisdiction representatives to create a Project Plan that is reasonable and appropriate with regard to the commitments placed on the Jurisdiction team. The time that these key individuals dedicate in this implementation is a valuable investment in Jurisdiction's long-term success.

3. Milestone Sign Off Process – Progress on this project will be measured and documented through signoff of milestone criteria. Often, future milestones may be dependent on timely review and acceptance of preceding deliverables. Delays in the acceptance of a single deliverable have the potential to impact the startup or completion of subsequent milestones and may cause a shift in the overall project timeline.

Approach

The State's implementation methodology is comprised of six stages, each with its own project objectives, activities and defined deliverables. Each stage of the implementation is managed using a detailed project plan that is defined to meet each Jurisdiction's goals and objectives. The graphic below identifies this methodology and its related stages.



The sections following describe what a Jurisdiction can expect from each of these stages. For clarity, each stage is defined by specific Objectives, Activities, and Deliverables. Definitions of these terms are included in the table below.

Implementation Methodology - Definitions

	Definition	Expectations
Objectives	The defined purpose and expected achievements of the stage.	At the completion of each stage, the Jurisdiction/State project management team will review the appropriate objectives to ensure that the defined objectives have been successfully achieved.
Activities	Identifies the tasks to be performed in order to achieve the defined objectives.	Activities drive the daily operations of the project implementation and follow the format of the project plan. Activities are closely monitored to determine their project status and progress.
Deliverables	The tangible result that will be delivered at the end stage. A project deliverable can be anything from a completed document, a presentation, or configured system.	Deliverables are material artifacts that represent the defined objectives and are the result of Activities. The deliverables represent the objectives of the stage in a substantive manner whereby the project success can be evaluated and approved.



Stage 1 –Initiation

The initiation stage is arguably the most critical stage of the project implementation, because this stage sets the tone for the entire implementation by defining expectations and guidelines for all stages.

During the project initiation stage, the State and jurisdiction Project Managers will complete a thorough review of the project scope, objectives, deliverables, and timeframe. This review leads to the creation for a formal Project Charter and a comprehensive Project Plan. In addition, all project management tools and templates – including a Project Status Report, Issues and Risk Management Log, Milestone Acceptance, and Change Order – will be defined and agreed upon.

The Initiation stage will culminate with a Project Kickoff Meeting in which the Project Managers review the core objectives of the project with all project participants and stakeholders.

Stage 1 Objectives

- Establish a detailed project approach for the specific business needs of the Jurisdiction. This is manifested in the development of a project team and each member's role and responsibility is clearly defined. This team will develop detailed project plan, a resource/task assignment list, and an associated project timeline.
- Develop a strong communication plan that includes status meetings, progress tracking and reporting mechanisms, issue/risk management plans, budget management and resource management plans.
- Review and approval of all project deliverables, defined within the context of their associated stage objectives.
- Identify all project milestones as they relate to project stages. Project milestones include approval and sign-off requirements.

Stage 1 Activities

- Meet with all departmental stakeholders to discuss the overall project approach, and communicate specific departmental expectations. This includes identifying departmental team leads and reviewing project communication plans.
- Review project scope and create a project plan that identifies all resources needed for specific plan tasks.
- Establish a project communication schedule that outlines project status meetings and project progress and reporting procedures.
- Identify potential areas of risk and create a risk management plan.
- Establish the formal review and approval procedures for all deliverables, milestones and project completion activities.



Stage 1 Deliverables

- Project Charter** – A comprehensive deliverable that defines how the project will be managed and executed for each of the subsequent stages of the project. This document details all functional areas of the project implementation. This document includes Jurisdiction specific project approach and related plan, project organization and roles/responsibilities matrix, a communication plan, and the issue/risk management plan. In addition, the charter outlines how deliverables, milestones, and change control procedures are addressed throughout the lifecycle of the project.
- Baseline Project Plan** – A project timeline that details the dates and durations of system implementation activities. This plan serves as the roadmap for all implementation activities and includes dates of status meetings and executive committee meetings. This plan serves as the main calendar to track all events related to this project.
- Project Management Template** – State and Jurisdiction Project Managers will agree on the tools and templates that will be used to manage the project. These typically include the Project Status Report, Issues and Risks Management Log, Milestone Acceptance and Change Order. However, additional tools and templates may be used depending on the individual project needs.
- Project Initiation Kickoff Meeting and Product Demonstration** – State and Jurisdiction project managers will hold a project kick-off meeting to review the project charter and plan with all project participants and stakeholders.

Stage 2 – Analysis

The Analysis phase affords the opportunity to understand and define the business processes that are currently in place, the vision of future business processes once Accela Automation is installed, and where and how these two sets of processes vary.

This process takes shape through a series of Requirements Workshops held with each participating department during which system requirements are discussed. These requirements are analyzed for the configuration of Accela Automation and include details such as in-scope data conversions, interfaces and reports.

Stage 2 Objectives

- Identify the detailed system requirements for each Record type and for all in-scope interfaces.
- Work with Jurisdiction to prepare detailed requirements for in-scope data conversion activities.
- Define departmental reporting needs and their purpose. Identify resources needed in report development, and provide a list of recommended reports (including custom documents/letters/reports) defined as in-scope (both standard and the required number of custom), pursuant to the Scope of Work.
- Creation of system test plan which verifies the system configuration and confirms functionality within departmental requirements.

Stage 2 Activities

- Collect and chart each business process as a basis for configuration in Accela Automation's workflow tool.
- Collect employee names and associated roles for establishing user groups.
- Document existing permit and application numbering schemes and determine their appropriateness for the new system.
- Collect and document intake requirements, forms, and data fields for each case/business process type.
- Collect and document output requirements (documents/letters/reports).
- Collect and document fees, fee schedules, and collection procedures for each case/business process type.
- Collect and document all required inspections and inspection result options for each case/business process type.
- Provide assistance in identifying potential data elements that should be mapped into the Accela Automation application from those identified in-scope data sources.
- Work with jurisdiction to identify required fields to be mapped to existing agency systems that are identified as "required interfaces" pursuant to the Scope of Work.
- Conduct workshops with each department's management team to discuss potential organizational impacts associated with enhanced workflows and job functions.
- Develop training requirements for user groups within each department.
- Prepare and review a High-Level System Testing Plan for each department.

Stage 2 Deliverables

- **Software Configuration Document** – The blueprint for configuring the Accela Automation system. This document that outlines all business rules and workflows required by the jurisdiction and details the data conversion, reporting, and infrastructure requirements to successfully deploy the application.

Stage 3: Configuration

Using the Software Configuration Document delivered at the end of the Analysis stage, the implementation team configures the Accela Automation application to the jurisdiction's requirements. This process includes configuration of all defined Record types and associated workflows.

Completion of Stage 3 occurs after Stage 4. At the completion of this stage, the development/ configuration work of the application, reports, interfaces and data loading routines will be completed and the system tested by the Project Team.



Stage 3 Objectives

- Successfully complete the configuration and testing of the Accela Automation system to meet the in-scope requirements of the project.
- Train and work with jurisdiction staff that will develop and test the data conversion programs used to migrate data from in-scope data sources into Accela Automation.
- Prepare Accela Automation for transition to a Production Environment.

Stage 3 Activities

- Identify and configure all application types and associated workflows within Accela Automation.
- Configure and test the application in a test environment to the specifications detailed in the System Configuration Document.
- Conduct review sessions with the departments throughout the configuration process to ensure the application look and feel and workflow functions are meeting the expectations of the jurisdiction.

Stage 3 Deliverables

- Configuration of in-scope activity/application/ transaction/etc. types (includes workflows and statuses, user defined fields, fee structures, business rules, etc.) The system will be fully configured to meet the jurisdiction's specific business rules and processes.

Stage 4: Build

As the system is being configured, the Accela Automation application is loaded on Oregon's support hosting environment. This stage includes development of system integration links, event scripts, in-scope reports, and data conversion/migration programs as defined by the final Scope of Work between the State of Oregon and the jurisdiction.

Although the majority of stage 3 occurs before Build, configuration activities do not end until after the Build stage is completed.

Stage 4 Objectives

- Successfully install the purchased modules/peripherals of Accela Automation on the jurisdiction's Support environment.
- Work with jurisdiction staff to train individuals on how to ensure data conversion mappings are accurate and schedules are in-line with required data loads for system and user acceptance testing cycles
- Evaluate technology infrastructure for compliance with Accela Automation's technical standards, specifications, and requirements.
- Map, review, and convert/migrate all system data into Accela Automation.
- Develop and test all in-scope interfaces, event scripts, and reporting.



Stage 4 Activities

- Assess Support environment to ensure that the required infrastructure components meet all requirements to support the Accela software.
- Make recommendations (if necessary) for upgrades to the Support environment as required to support the Accela software installation.
- Review technology infrastructure for purposes of assessing its compliance with the system requirements of Accela Automation.
- Install all purchased Accela Automation modules on the Support environment.
- Review the requirements for the data conversion activities to ensure proper mapping of data fields into the Accela Automation applications.
- Work with designated jurisdiction staff to train individuals in the development and system testing of the data conversion/migration programs necessary to convert data from in-scope legacy applications and load the data into the Accela application.
- Configure/develop and system test the standard and custom in-scope reports per the Requirements Definition specifications.
- Develop and test the application integration programs necessary to link the Accela Automation application to the in-scope jurisdiction legacy systems. In addition, the State team will communicate with the jurisdiction's IT department to confirm the proper enhancements to the legacy systems are made to allow for the integration with the Accela application.
- Successfully configure/build and test in-scope reports.
- Test all installed Accela Automation modules.

Stage 4 Deliverables

- **Event Script Development** – Any in-scope event scripts are developed in this stage to realize the workflow requirements and business rules identified in the Statement of Work.
- **Report Specifications and Development** – All in-scope reporting is developed in this stage to realize the reporting requirements identified in the Statement of Work.
- **Data Conversion Specifications and Development** – Train jurisdiction staff in all in-scope data conversion identified in the Scope of Work.
- **Interface Specifications and Development** – All in-scope interfaces are built in this stage to realize the interface requirements identified in the Scope of Work.

Stage 5 – Readiness

System readiness is the last implementation stage prior to deployment and affords the State and Jurisdiction the time needed to test the system, train all users, and prepare for system deployment. User acceptance testing plans are developed, approved, and executed during this stage. The Jurisdiction will be required to sign-off at the completion of this phase as confirmation that the requirements of the system have successfully been met.

Stage 5 Objectives

- Develop and execute a User Acceptance Test Plan to ensure their requirements are met.
- Successfully execute the User Acceptance Test Plan and gain approval and signatures confirming that the terms and conditions of the system have been met.
- Complete all User Acceptance Test activities; documented plan must be executed by jurisdiction prior to Stage 6: Deployment.

Stage 5 Activities

- Execute the User Acceptance Test Plan to ensure the requirements of the jurisdiction have been met by the new system.
- Schedule, conduct, and document results of testing sessions with each participating department to execute the User Acceptance Test Plan. If necessary, corrections deemed to be in-scope will be made to the system.
- Schedule an executive session to review the successful completion of the User Acceptance Test Plan and gain signature that the system meets the in-scope requirements of jurisdiction.
- Gain approval to execute the Deployment Plan.
- Schedule training sessions.
- Conduct training on Accela Automation for the specified user groups (includes end user training, administrative and maintenance training) on their enhanced workflows utilizing the new Accela application (business operations training).

Stage 5 Deliverables

- User Acceptance Testing** – A jointly developed User Acceptance Plan will be developed. This plan identifies what criteria must be met in order for the System to be “accepted”, and is used as a guideline in User Acceptance Testing. Approval of completion of this deliverable represents that the agency is confirming that the team has successfully met the requirements of the new system per the Scope of Work and the system is ready to be deployed in production.
- End User Training** – With the system configured and built on a support environment, specific user groups are trained in the use of Accela Automation, as appropriate for their specific function. This training includes how their daily responsibilities and workflows are enhanced by the Accela application (business operations training).

Stage 6 – Deploy

The final stage of the project – Deploy – is marked by the transition of Accela Automation to a production IT environment. All necessary go-live activities are identified, executed, documented and reviewed. An analysis of this process occurs, in conjunction with a review of the Scope of Work to ensure that all requirements have been met. Once deployed, the agency may begin to use the system in their day-to-day



activities. Upon completion of Stage 6, all support functions transition to the Helpdesk.

Stage 6 Objectives

- Completion of successful training on the use and maintenance of the new Accela application.
- Successfully deploy the Accela application into the production environment
- Jurisdiction begins to use the system in their day-to-day activities.

Stage 6 Activities

- Complete all training for the specified user groups.
- Execute the Deployment Plan, whereby installing and “going live” with the new system in the agency’s production environment.
- Schedule an executive session to review the activities and results of deployment, and gain agreement that the project has been successfully completed.

Stage 6 Deliverables

- **Go-Live Checklist Development, Tracking and Execution** – A document detailing all go-live required activities, timelines and execution.
- **Go-Live** – Accela Automation is fully transitioned to the production environment and ready for daily use.
- **Post Go-Live Analysis** – A review of all activities detailed in the Go Live Checklist and confirmation of project completion.
- **Transition to the Helpdesk for Ongoing Support** – The process whereby the Accela Automation application is transitioned to the helpdesk for ongoing support. This includes training jurisdiction staff on the many ways to contact and interact with the Helpdesk, as well as the transition of all documented issues and requests from the implementation team to Helpdesk staff.

Exhibit C Software License Agreement

Note: DCBS through the ePermit System Agreement has the right to permit Jurisdictions to use the ePermit Software as set forth in Exhibit G, License Agreement, of the ePermit System Agreement. While the entire software license agreement between the State and Accela, Inc., has been provided here for continuity and ease of use, a participating city or county is only bound by Sections 3.1, 3.2, 4 and 5 as specified in this agreement.

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|---|--|
| <p>1. <u>Parties</u> ACCELA
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|---|--|

This License Agreement ("LA") is intended for the exclusive benefit of the Parties; except as expressly stated herein, nothing will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination

- 2.1 Term Provided that Customer signs and returns this LA to Accela **no later than August 8, 2008**, this LA is effective as of the date of Customers signature ("Effective Date") and will continue until terminated as provided herein.
- 2.2 Termination Either party may terminate if the other party materially breaches this LA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Upon any termination or expiration of this LA, all rights granted to Customer are cancelled and revert to Accela.

3 Intellectual Property

- 3.1 License The software products ("Software") listed in Exhibit A are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in the Software and grants to Customer a perpetual, limited, nonexclusive, nontransferable license to use the Software, subject to the following terms and conditions:
- 3.1.1 The Software is provided for use only by Customer employees. For the purposes of subsections 3.1, 3.2 and Sections 4 and 5 of this LA, Customer means: i) the individual Jurisdiction with respect to its use of the Software, provided that the licensing fee has been paid for such Jurisdiction, and ii) the State of Oregon acting by and through its Department of Consumer and Business Services with respect to its use of the Software.

- 3.1.2 The Software may be installed on one or more computers but may not be used by more than the number of users for which the Customer has named user licenses. The Software is deemed to be in use when it is loaded into memory in a computer, regardless of whether a user is actively working with the Software. Accela may audit Customer's use of the Software to ensure that Customer has paid for an appropriate number of licenses. Should the results of any such audit indicate that Customer's use of the Software exceeds its licensed allowance, Customer agrees to pay all costs of its overuse as determined using Accela's then-current pricing; any such assessed costs will be due and payable by Customer upon assessment. Customer agrees that Accela's assessment of overuse costs pursuant to this Subsection is not a waiver by Accela of any other remedies available to Accela in law and equity for Customer's unlicensed use of the Software.
- 3.1 .3 Customer may make backup copies of the Software only to protect against destruction of the Software. With exception of the Entity Relationship Diagram and any other documentation reasonably-designated and specifically-marked by Accela as trade secret information not for distribution, Customer may copy Accela's documentation for use by those persons described in section 3.1.1, supra, provided that such use is for business purposes not inconsistent with the terms and conditions of this Licensing Agreement. "Trade Secret" has the meaning set forth in ORS 192.501(2)
- 3.1.4 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.
- 3.1 .5 Customer may not obscure, alter, or remove any confidentiality or proprietary rights notices.
- 3.1 .6 Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (**ORS 30.260 through 30.300**), Customer is liable to Accela for any direct damages incurred as the result of unauthorized reproduction or distribution of the Software which occur while the Software is in Customer's possession or control.
- 3.1 .7 Customer may use the Software only to process transactions relating to properties within both its own geographical and political boundaries and in counties contiguous to Oregon with populations below 100,000. Customer may not sell, rent, assign, sublicense, lend, or share any of its rights under this LA.
- 3.1 .8 Customer is entitled to receive the Software compiled (object) code and is licensed to use any data code produced through implementation and/or normal operation of the Software; Customer is not entitled to receive source code for the Software except pursuant to an Intellectual Property Escrow Agreement, which may be executed separately by the Parties. Accela and Customer will execute an Intellectual Property Escrow Agreement within 30 days of Contract execution.
- 3.1 .9 All rights not expressly granted to Customer are retained by Accela.

3.2 License Warranties

3.2.1 Accela warrants that it has full power and authority to grant this license and that, as of the effective date of this LA, the Software does not infringe on any existing intellectual property rights of any third party. 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 expressly agrees to defend, indemnify, and hold Customer harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the Software, or the Customers use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that Customer shall provide Accela with prompt written notice of any infringement claim. Accela will have the sole right to conduct the defense of any legal action and all negotiations for its settlement or compromise; provided, however, Accela shall not settle any claim against the Customer with the consent of Customer.

3.2.2 Accela has no obligation for any claim based upon a modified version of the Software or the combination or operation of the Software with any product, data, or apparatus not provided by Accela, with the exception of those products identified in Exhibit J. Accela provides no warranty whatsoever for any third-party hardware or software products.

3.2.3 Except as expressly set forth herein, Accela disclaims any and all express and implied warranties, including but not necessarily limited to warranties of merchantability and fitness for a particular purpose.

3.3 Compensation

3.3.1 License Fees In exchange for the Software described hereinabove, Customer will pay to Accela the amounts indicated in Exhibit A3.

3.3.2 Payment Terms Amounts are quoted in United States dollars and do not include applicable taxes, if any. The payment terms of all invoices are net forty-five (45) calendar days from the dates of the invoices. Any payment not paid to Accela within said period will incur a late payment in an amount equal to two-thirds of one percent (.66%) per month (eight percent (8% per annum), on the outstanding balance from the billing date. Accela may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer. All payments to Contractor are subject to ORS 293.462

4. Confidentiality

4.1 Confidentiality and Nondisclosure. Each party acknowledges that it and its employees or agents may, in the course of performing its responsibilities under this LA, be exposed to or acquire information that is confidential to the other party or the other party's clients. Any and all information clearly marked confidential, or identified as confidential in a separate writing as confidential provided by one party or its

employees or agents in the performance of this LA shall be deemed to be confidential information of the other party ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by the recipient of such information shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by the party acquiring such information) publicly known or is contained in a publicly available document; (b) is furnished by the party disclosing such information to others without restrictions similar to those imposed by this LA; (c) is rightfully in the receiving party's possession without the obligation of nondisclosure prior to the time of its disclosure under this LA; (d) is obtained from a source other than the discloser without the obligation of confidentiality, (e) is disclosed with the written consent of the disclosing party, or; (f) is independently developed by employees or agents of the receiving party who can be shown to have had no access to the Confidential Information.

- 4.2 The recipient of Confidential Information agrees to hold Confidential Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own Confidential Information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than as contemplated by this LA or reasonably related thereto, including without limitation the use by Customer of Accelas who need to access or use the System for any valid business purpose, and to advise each of its employees and Accelas of their obligations to keep Confidential Information confidential.
- 4.3 Each party shall use commercially reasonable efforts to assist the other in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other immediately in the event it learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this LA and each party will at its expense cooperate with the other in seeking injunctive or other equitable relief in the name of the other against any such person.
- 4.4 Each party agrees that, except as provided in this LA or directed by the other, it will not at any time during or after the term of this LA disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this LA each party will turn over to the other all documents, papers and other matter in its possession which embody Confidential Information.
- 4.5 Each party acknowledges that breach of this Article VIII, including disclosure of any Confidential Information will give rise to irreparable injury which is inadequately compensable in damages. Accordingly, each party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Each party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the other and are reasonable in scope and content.

4.6 Customers obligations under this Article VIII shall be subject to the Oregon Public Records Laws, ORS 192.410 through ORS 192.505.

END OF DOCUMENT