



ACCELLION SOLUTIONS LICENSE AGREEMENT

This Accellion Solutions License Agreement (the “**Agreement**”) is made as of _____, _____ (the “**Effective Date**”) by and between Accellion USA, LLC. (“**Accellion**”), a Delaware corporation with a place of business at 1804 Embarcadero Place, Suite 200, Palo Alto, CA 94303, and _____ (“**Customer**”), a _____ with a principal place of business at _____ (each a “**Party**” and referred to collectively as the “**Parties**”). For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Accellion Software; Ordering.**

1.1 **Accellion Software.** Accellion licenses its software products on a subscription basis. Software is made available as a software-only (or “virtual”) solution, as a hosted solution, or on a physical appliance. Customer’s rights to use Accellion software apply only to the Accellion software licensed under an Order (defined below).

1.2 **Order Process.** Orders for Accellion software and services may be made through written Orders placed directly with Accellion or through an Accellion authorized reseller (“**Channel Partner**”). An order becomes part of this Agreement upon acceptance by Accellion or a Channel Partner (the accepted order referred to as the “**Order**”), provided that for Orders placed through Channel Partners, only the line items for Accellion’s published products and services listed in the Order and which are provided to and paid for by Customer constitute the “Order.” The terms of Customer’s form of purchase order or similar documents shall not apply to the relationship of Parties. In the event of any conflict between the terms of any Order and the terms of this Agreement, the terms of this Agreement shall govern.

1.3 **Delivery.** For downloadable versions of the Accellion software, Customer may download the software from a link provided by Accellion. For hosted versions of the Accellion Solution, access shall be provided through a password-protected web interface. Delivery occurs when such link or access is made available to Customer.

2. **Definitions.** Unless otherwise specified, capitalized terms used in this Agreement will have the meanings attributed to them in this Section 2.

“**Accellion Solution**” means the object code versions of the Accellion software identified on an Order and includes related Server Software, Client Software, Updates, and Documentation, but does not include Open Source Software, which is provided pursuant to Section 3.5.

“**Affiliate**” means an entity, which directly or indirectly controls, is controlled by or is under common control with a Party to this Agreement.

“**Client Software**” means the object code versions of the desktop client software for the licensed Accellion Solution.

“**Designated User**” means the number of users for whom Customer has purchased rights to use the Accellion Solution, as set forth on the applicable Order, plus any additional True-Up Users added pursuant to Section 5.3 below. Designated Users may consist of: (i) employees and independent contractors of Customer and its Affiliates, and (ii) individual representatives of vendors and/or service providers of Customer and its Affiliates.

“**Documentation**” means Accellion’s standard written materials and specifications for the Accellion Solution licensed by Customer.

“**Effective Date**” means (i) for Orders submitted to Accellion, the date that Accellion accepts the Order; or (ii) for orders submitted to a Channel Partner on a form other than an Accellion Order form, the date Accellion makes the software available to Customer for download or, for software provided on a physical appliance, the date of shipment.

“**Hosted Services**” means the remote access and use of a hosted version of the Accellion Solution as hosted by Accellion.

“**License Term**” means the subscription period for use of the Accellion Solution, as identified on the applicable Order. Each renewal is a separate License Term.

“**Maintenance Support Services**” means the support services provided by Accellion as described in Section 4.

“**Release**” means a version of the Accellion Solution for which Accellion charges a separate fee.

“**Server Software**” means the object code server software version of the Accellion Solution, as identified on the applicable Order.

“**Update**” means additions, upgrades, or modifications to the Accellion Solution. Updates do not include Releases.

3. License Terms.

3.1 **License Grant.** Subject to the terms and conditions of this Agreement, Accellion hereby grants to Customer during the License Term, a non-exclusive, non-transferable and non-sublicenseable license to: (a) install and use the Client Software on supported environments for up to the number of Designated Users; and (b) use, access, and for Accellion Solutions not hosted by Accellion, copy the Server Software on supported environments for up to the number of copies identified on the Order for Customer’s internal business purposes.

3.2 Hosting.

(a) **By Accellion.** If Customer orders Hosted Services, they are provided pursuant to the terms of Accellion’s Hosting Service Level Agreement available at <http://www.accellion.com/terms/hostingsla> and incorporated herein by reference.

(b) **By Customer’s Outsourced Provider.** For virtual versions of the Accellion Solution, if Customer elects to engage its own outsourcing provider (each a “**Outsourced Provider**”), then: (i) Customer may sublicense to Outsourced Provider the right to install and operate the Accellion Solution in the form as provided by Accellion, solely for the benefit of Customer and subject to the terms and conditions of this Agreement; (ii) Customer shall be liable for any acts or omissions of Outsourced Provider in violation of this Agreement; and (iii) Customer shall identify in writing to Accellion a single point of contact at Outsourced Provider for any maintenance and technical support matters. In order to provide warranty and Maintenance Support Services, Accellion requires remote access to the Accellion Solution and may require on-site access. Failure to provide Accellion with such reasonable access shall relieve Accellion of its warranty and Maintenance Support Services obligations with respect to such Accellion Solution.

3.3 **License Restrictions.** Customer shall not copy the Accellion Solution except to make a reasonable number of copies for the purposes of security back-up, relocation or disaster recovery; provided, however, that Customer may make and use the number of copies of Client Software that it deems appropriate unless the number of copies of Client Software is restricted as set forth on the applicable Order. The Accellion Solution may not be modified, disclosed, reverse-engineered, disassembled, or decompiled except and to the extent allowed by applicable law. Customer shall not transfer, sell, license, sublicense, outsource, rent or lease the Accellion Solution or use it for service bureau or other third-party use. All rights not expressly granted hereunder are reserved. Customer is solely responsible and liable for the use of and access to the Accellion Solution by Designated Users and for all files and data transmitted, shared, or stored using the Accellion Solution. Customer acknowledges and agrees that the licenses granted herein are neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Accellion with respect to future functionality or features.

3.4 **Ownership.** All right, title, and interest, including without limitation all intellectual property rights, in and to the Accellion Solution, including any and all modifications, enhancements, derivative works, Updates and Releases, are the sole and exclusive property of Accellion and its licensors. Customer shall not remove, and shall reproduce on any permitted copies, all proprietary, copyright, trademark and trade secret notices contained in or placed upon the Accellion Solution. Customer will take reasonable precautions (including the precautions used for Customer’s own confidential information) to prevent the unauthorized use or disclosure of the Accellion Solution, the Documentation, or the results of any performance

or benchmark tests of the Accellion Solution. Customer will not allow the Software or any performance or benchmark test results to be made available to any third party unless Accellion approves that disclosure.

3.5 **Open Source Software.** Customer agrees that any software or materials which may be made available by Accellion, or otherwise obtained or used by Customer, subject to an open source license or other open source terms ("***Open Source Software***") shall be and shall remain subject to the terms and conditions of the original providers and are not part of the Accellion Solution. Open Source Software terms are made available either with the Accellion Solution or through the administration interface of the applicable Accellion Solution.

4. **Maintenance Support Services.** Accellion provides Maintenance Support Services for the License Term at no additional charge under the terms set forth at <http://www.accellion.com/supportguidelines/enterprise.html>, which are incorporated herein by reference. As part of Maintenance Support Services, Accellion will make available to Customer all Updates to the supported Accellion Solution that Accellion makes generally available to its other customers. Customer shall provide Accellion access to the Accellion Solution to install such Updates if required by Accellion. Customer agrees to deploy any critical Updates, as identified by Accellion, within five (5) days following receipt. Accellion will not be liable to Customer for damages, liabilities, fines, costs, and/or expenses, including costs of litigation and reasonable attorneys' fees, which Customer may incur, based upon or arising out of Customer's failure to implement any critical Updates.

5. **Payment; True-Up Users.**

5.1 **Payment.** Customer shall pay the fees specified in the Order. Orders are firm commitments of Customer and are not cancelable by Customer. For Orders made directly with Accellion, (i) Customer shall pay invoices in U.S. dollars within thirty (30) days of the invoice date and without offset or deduction, and (ii) all payment terms are subject to approval of Customer's creditworthiness, which approval may be withdrawn at any time; and (iii) payments are non-refundable except as otherwise explicitly stated in this Agreement and Accellion may apply a late charge on overdue invoices at a rate of one and one-half (1.5%) per month or the maximum allowed by law, whichever is less.

5.2 **Taxes.** All fees are exclusive of value-added tax, sales tax, customs duties, or similar taxes or imposts, including withholding taxes, and shall be made by Customer without deduction therefore. Customer shall pay all such taxes or duties, except taxes based on Accellion's net income, and reimburse Accellion or its Channel Partner if either is required to pay any such taxes or duties.

5.3 **True-Up Users.** If permitted on the Order, Customer may add Designated Users during the License Term ("***True-Up Users***"), by notifying Accellion of the number of True-Up Users promptly following the end of each calendar quarter in which Customer adds True-Up Users. Accellion or its Channel Partner will then invoice Customer for such True-Up Users at a prorated amount of the annual rate stated in the applicable Order (i.e. for such calendar quarter and the remaining License Term). Upon payment, True-Up Users shall be deemed Designated Users under this Agreement and for any renewals. When Customer is permitted to add True-Up Users, Customer agrees to allow Accellion, with Customer's prior consent, not to be unreasonably withheld, to electronically access the Accellion Solution, or, with respect to Hosting Services, to monitor use, to verify Customer's compliance with this Agreement. Customer shall promptly pay to Accellion any underpaid fees revealed by such audit and, if the audit reveals an underpayment of 5% or more, the reasonable costs of the audit.

5.4 **Automated Reporting.** The Server Software periodically transmits technical data to Accellion. That data does not include the content of any emails or attachments, file names or any personally identifiable information. The transmitted information contains aggregate non-personal usage information for each day the Accellion Solution is in use, including but not limited to: (i) the number and type of messaging senders and recipients, (ii) account usage information, and (iii) the type of Accellion Solution features used and related data. Customer will not in any way attempt to configure the Accellion Solution or create systems that prevent the transmission or delivery of such usage data. Accellion uses such data only for Accellion's own internal business purposes and such data shall be considered Accellion's Confidential Information. Accellion only discloses such data (a) in an aggregated form with data from other customers in which neither Customer's identity nor that of Designated Users are revealed, or (b) as required by applicable law.

6. **Confidentiality.**

6.1 **Confidential Information.** Each Party agrees not to use the Confidential Information of the other Party for any purpose other than strictly for the purpose of performing its obligations or exercising its rights under this Agreement. Additionally, except as authorized below, each Party agrees to maintain in confidence and not disclose any Confidential Information acquired directly or indirectly from the other Party. “**Confidential Information**” shall include, but is not limited to, matters of a technical, financial, commercial, business, or other proprietary nature. The results of any performance, penetration and/or benchmark tests of the Accellion Solution shall be the Confidential Information of Accellion. Confidential Information does not include any information which (a) is or becomes publicly known other than through a breach of this Agreement by the receiving Party; (b) is already known to the receiving Party at the time of disclosure as evidenced by the receiving Party’s written documentation, provided that it was not previously obtained directly or indirectly by the receiving Party from the disclosing Party; (c) is lawfully received by the receiving Party from a third party having no obligation of confidentiality with respect thereto; (d) is proven by receiving Party to have been independently developed by employees of the receiving Party who have not had direct or indirect access to, or directly or indirectly received any, Confidential Information under this Agreement; or (e) is authorized in writing by the disclosing Party to be released from the confidentiality obligations herein. Accellion may share Customer Confidential Information with its parent and subsidiary companies (“**Affiliates**”), but shall remain liable for any act or omission of such Affiliates in violation of this Agreement. Each Party agrees that in the event of such Party’s actual or threatened violation of the provisions of this Section, the other Party will not have an adequate monetary remedy and shall be entitled to seek appropriated immediate injunctive relief without any requirement to post bond, in addition to any other available remedies.

6.2 **Customer Protected Data.** Customer acknowledges that Accellion does not need or require access to any files or attachments stored or transmitted with the Accellion Solution or any personally identifiable information about any Customer personnel, other than as described in Section 6.3, or customers (collectively, “**Protected Data**”). If Customer desires Accellion to receive and access any Protected Data, Customer shall first obtain the written approval of an executive officer of Accellion, which may be withheld by Accellion in its sole discretion. Customer will be responsible for the Protected Data and for complying with any regulations, laws, or conventions applicable to the Protected Data. If Customer is a “covered entity” or a “business associate” and maintains “protected health information” (as those terms are defined in 45 CFR § 160.103) as part of Protected Data, Customer agrees to Accellion’s Business Associate Agreement available at <https://www.accellion.com/legal/accellion-business-associate-agreement> which is incorporated by reference. If the Customer is subject to the General Data Protection Regulation (EU) 2016/679 (“**GDPR**”), Customer agrees to Accellion’s Data Processor Addendum available at <https://www.accellion.com/legal/accellion-dpa> which is incorporated herein by reference.

6.3 **Notice and Consent Regarding Transfer of Data.** Use of the Accellion Solution requires that when a Customer’s End Users contact Accellion for customer service issues, the personal data of the Customer’s End Users (including but not limited to End User’s email addresses, first and last names, geographic location, and phone number) be processed in the United States of America by Accellion, Inc., in Europe by Accellion UK Ltd and Accellion GmbH, and in Singapore by Accellion PTE Ltd. where customer support teams, computing systems and infrastructure necessary for Customer’s exercise of its rights hereunder are located. Support would not be available without such processing of personal data in the United States of America, Europe, and Singapore, and, pursuant to Article 49 of the GDPR, Customer hereby expressly consents to the processing by, and transfer of personal data to, Accellion, Inc. in the United States of America, Accellion UK Ltd and Accellion GmbH in Europe, and Accellion PTE Ltd in Singapore for that purpose. Accellion UK Ltd, Accellion GmbH, and Accellion PTE Ltd are subsidiaries of Accellion, Inc. and each entity processes such personal data in compliance with the contractual requirements established with Customer.

6.4 **Encryption.** For avoidance of doubt, so long as Accellion implements measures to encrypt Confidential Information and Protected Data both in transit and at rest, Accellion will be deemed to satisfy its obligations to maintain the confidentiality and security of such information pursuant to this Agreement

7. Limited Warranties and Disclaimer.

7.1 Limited Accellion Solution Performance Warranty.

(a) **Warranty.** Accellion warrants to Customer that for a period of thirty (30) days after the date of delivery: (i) the media on which the Accellion Solution is furnished under normal use will be free from material defects in materials and

workmanship; and (ii) the Accellion Solution and Open Source Software will operate in substantial conformance with the Documentation.

(b) Remedy. Any warranty claim must be made by written notice to Accellion within the applicable warranty period. Accellion's entire liability and Customer's exclusive remedy under the warranty in subsection (a) above shall be replacement or repair of the defective media or Accellion Solution that does not meet Accellion's limited warranty and if Accellion is unable to repair or replace defective components of the Accellion Solution within a reasonable period of time (not to exceed thirty (30) days from Accellion's receipt of Customer's notice), this Agreement shall terminate, in which case: (i) Accellion shall refund all license fees received by Accellion for the Accellion Solution for the applicable License Term; and (ii) Customer shall uninstall and destroy the nonconforming Accellion Solution and certify in writing that it has done the same. Accellion is not liable under any warranty or otherwise for defects or liability caused by the use of the Accellion Solution in any manner or for any purpose other than that for which it was licensed to Customer, or for causes not within Accellion's reasonable control. Warranties are void if failures are caused in whole or in part by accident, abuse, misuse, or modifications not authorized in writing by Accellion.

7.2 Virus Protection. Accellion warrants to Customer that, to the best of Accellion's knowledge as of the date of delivery, the Accellion Solution will be free from any viruses, spyware, trojans, or disabling or malicious code, provided that Server Software includes disabling mechanisms that prevent access to the Server Software following expiration of the License Term.

7.3 Limited Services Warranty. Accellion warrants that for a period of thirty (30) days following installation or professional services, such services will be provided in a professional and workmanlike manner consistent with generally accepted industry standards. As Customer's sole and exclusive remedy and Accellion's sole and exclusive liability for breach of the foregoing warranty, Accellion will, at its sole option and expense, and provided that Accellion is notified of any such breach during the warranty period, re-perform the services, or if Accellion is unable to perform the services as warranted, refund the fees paid to Accellion for the services.

7.4 Disclaimer. THE EXPRESS LIMITED WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, CONTRACTUAL OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ACCELLION DOES NOT WARRANT THAT THE USE OF THE ACCELLION SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL NONMATERIAL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. ACCELLION MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PRODUCTS OR SERVICES PROVIDED BY ITS CHANNEL PARTNERS OR ANY HOSTED SERVICES PROVIDERS, AND SHALL HAVE NO LIABILITY WITH RESPECT TO ANY ACT OR OMISSION OF ANY CHANNEL PARTNER OR HOSTED SERVICES PROVIDERS. NO CHANNEL PARTNER OR HOSTED SERVICES PROVIDER SHALL HAVE ANY AUTHORITY TO BIND ACCELLION TO ANY TERMS OR CONDITIONS OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN.

8. Indemnification

8.1 Customer Indemnity. Customer will, at its expense, indemnify and hold Accellion, its Affiliates and their respective officers, directors, employees, agents, successors and assigns ("***Accellion Indemnitees***") harmless against any settlement agreed to by Customer, or any award of damages, liabilities, fines, costs, and/or expenses, including costs of litigation and reasonable attorneys' fees, which Accellion Indemnitees may incur, based upon or arising out of (i) any use of the Accellion Solution by Customer in breach of this Agreement, and (ii) the data, files, and content transmitted, shared, or stored using the Accellion Solution.

8.2 Accellion Indemnity. Accellion will defend any action brought against Customer to the extent that it is based upon a third party claim that the Accellion Solution infringes such third-party's U.S. patent or foreign equivalent existing as of the Effective Date of the applicable Order or any copyright, or misappropriates any trade secret (each a "***Claim***"), and will pay any costs (including reasonable attorney's fees) and damages finally awarded or paid in settlement of the Claim provided that Customer will give Accellion: (i) prompt written notice of such Claim, (ii) all cooperation and assistance reasonably requested by Accellion in the defense of the Claim, at Accellion's expense, and (iii) sole control over the defense and settlement of the Claim, provided that (a) Customer may participate in the defense of the Claim at its sole expense, and (b)

Accellion may not, without the prior written consent of Customer, enter into a settlement which admits liability of Customer or imposes a monetary obligation on Customer.

8.3 **Exclusions.** Accellion will have no liability for a Claim to the extent it results from: (a) modification of the Accellion Solution made by a party other than Accellion, if the Claim would not have arisen but for the modification; (b) the combination, operation or use of the Accellion Solution with third party data, software, equipment or devices, if such Claim would not have arisen but for such combination, operation or use; (c) Customer's failure to use updated or modified software provided by Accellion if use of such updated or modified software or hardware would have resolved the Claim; or (d) compliance by Accellion with designs, plans or specifications furnished by Customer or on Customer's behalf, if the Claim would not have arisen but for such designs, plans or specifications.

8.4 **Remedies.** If the Accellion Solution is held or is likely to be held as infringing, then Accellion may (i) replace the Accellion Solution, without additional charge, with a non-infringing product that is at least functionally equivalent; (ii) modify the Accellion Solution to avoid the infringement; (iii) obtain a license for Customer to continue use of the Accellion Solution; or (iv) if none of the foregoing are commercially reasonable, terminate the license for the infringing Accellion Solution and refund a pro rata portion of all fees received by Accellion for the Accellion Solution as measured over the License Term. Upon such termination Customer shall uninstall and destroy the nonconforming Accellion Solution and certify in writing that it has done the same. ACCELLION'S AGGREGATE INDEMNIFICATION LIABILITY FOR CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION SHALL NOT EXCEED THE FEES PAID BY CUSTOMER FOR THE APPLICABLE ACCELLION SOLUTION. THIS SECTION 8 SHALL CONSTITUTE ACCELLION'S SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR A CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

9. **Limitation of Liability.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS HEREIN, FOR A BREACH OF SECTION 6 (CONFIDENTIALITY), OR FOR CUSTOMER'S INTENTIONAL BREACH OF THE LICENSES GRANTED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY, AND ACCELLION'S LICENSORS, AFFILIATES AND SUPPLIERS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE PRODUCTS OR SERVICES SUPPLIED HEREUNDER, WHETHER IN AN ACTION IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. ACCELLION'S AGGREGATE LIABILITY FOR DAMAGES SHALL IN NO EVENT EXCEED THE TOTAL FEES RECEIVED FROM THE LICENSES GRANTED TO CUSTOMER UNDER THIS AGREEMENT IN THE PREVIOUS TWELVE MONTHS FOR THE APPLICABLE ACCELLION SOLUTION. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE PRICES AND TERMS OF THIS AGREEMENT WERE MADE IN RELIANCE UPON THE LIMITATION OF LIABILITY SPECIFIED HEREIN, WHICH ALLOCATE THE RISK BETWEEN ACCELLION AND CUSTOMER.

10. **Term and Termination.**

10.1 **Term.** This Agreement commences on the Effective Date and shall continue for the License Term on the applicable Order, unless terminated earlier as provided in this Agreement. Unless otherwise expressly set forth on the Order the License Term may be renewed for additional periods upon the Customer providing Accellion with written notice of its intention to renew at least thirty (30) days prior to the end of the then-current License Term. The initial License Term together with any renewal License Terms will be considered the "Term" of the Agreement.

10.2 **Termination.** Either Party may terminate this Agreement or any license granted under this Agreement if: (i) the other Party breaches any material provision of this Agreement for any reason, which breach has not been cured within thirty (30) days of written notice; or (ii) the other Party becomes subject of a voluntary or involuntary petition in bankruptcy, or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, which is not dismissed within sixty (60) days after commencement.

10.3 **Consequences of Termination.** Upon termination or expiration of this Agreement, for any reason, all rights granted under this Agreement shall terminate, and Customer will promptly return to Accellion or, at Accellion's request, destroy, the applicable Accellion Solution and provide Accellion with written certification by an officer of Customer certifying

compliance with the foregoing. Customer's obligations to pay taxes and any amounts past due along with the following provisions shall survive any expiration or termination of this Agreement: Sections 3.3, 3.4, 3.5, 6, 7, 8, 9, 10.3 and 11.

11. Miscellaneous.

11.1 Notice. Notices under this Agreement shall in writing and delivered via electronic mail, facsimile (with confirmation of receipt), in person, by overnight courier, or by prepaid certified or registered mail, return receipt requested, to a Party at its addresses set forth on the Order, as amended by notice pursuant to this Section. Notice by mail shall be deemed received five (5) days after deposit in the U.S. mails, with other notice deemed effective upon receipt.

For Accellion, a copy of any notice must be provided to the following:

Accellion USA, LLC.
Attn: Legal
1804 Embarcadero Road
Suite 200
Palo Alto, CA 94303

For Customer, a copy of any notice must be provided to the following:

Customer Name:
Address:

Telephone Number:

11.2 Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party, provided that either Party may transfer or assign this Agreement without such consent, whether by operation of law or otherwise, pursuant to a merger or other corporate reorganization or the sale of all or substantially all of the assets to which this Agreement relates. Accellion may delegate its obligations to Accellion Affiliates provided that Accellion shall remain liable for proper performance of this Agreement. Any other purported assignment by Customer shall be null and void. This Agreement shall bind the Parties and their permitted successors and assigns.

11.3 Modification, Waiver, and Remedies. No modification, alteration, amendment or addition shall be effective unless made in writing, dated and signed by a duly authorized representative of each Party. No waiver of any breach hereof shall be held to be a waiver of any other or subsequent breach. Each Party's rights and remedies are in addition to any other rights and remedies provided by law or in equity. No choice of any remedy shall constitute an election of remedies.

11.4 Publicity. Customer hereby consents to Accellion's inclusion of Customer's name in a customer listing, provided that Customer is not the sole Customer listed.

11.5 Force Majeure. Neither Party shall be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that Party, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, riots, acts of war, governmental regulations, communication or utility failures, or casualties. The foregoing shall not apply to Customer's payment and the mutual confidentiality obligations of the Parties.

11.6 Export. Customer acknowledges that the Accellion Solution is subject to United States and local country laws governing import, export, distribution and use. Customer is responsible for compliance by Customer and the Designated Users with United States and local country laws and regulations and shall not export, use or transmit the Accellion Solution (i) in violation of any export control laws of the United States or any other country, (ii) to any country requiring as a condition of import the disclosure of source code, or (iii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders.

11.7 Government Licensing. If the Accellion Solution is accessed or used by any agency or other part of the U.S. Government, the U.S. Government acknowledges that (i) the Accellion Solution and accompanying materials constitute “commercial computer software” and “commercial computer software documentation” under paragraphs 252.227.14 and 252.227.7202 of the DoD Supplement to the Federal Acquisition Regulations (“DFARS”) or any successor regulations, and the Government is acquiring only the usage rights specifically granted in this Agreement; (ii) the Accellion Solution constitutes “restricted computer software” under paragraph 52.227-19 of the Federal Acquisition Regulations (“FAR”) or any successor regulations and the government’s usage rights are defined in this Agreement and the FAR.

11.8 Governing Law. This Agreement shall be governed by the laws of the United States and the State of California, without reference to conflict of laws principles. Any dispute between the Parties regarding this Agreement will be subject to the exclusive venue of the state and federal courts in the state of California in San Francisco, San Mateo and Santa Clara counties. Each Party hereby consent to the exclusive jurisdiction and venue of such courts. Each Party hereby waives its right to a trial by jury for any disputes between the Parties arising from this Agreement. The Parties agree that the Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods will not apply to this Agreement. Any dispute by one Party to this Agreement against the other, which dispute arises from this Agreement, must be brought in accordance with this Section within one (1) year after the cause of action arises.

11.9 Severability. If any provision of this Agreement is finally determined to be contrary to, prohibited by, or invalid under applicable laws or regulations, this Agreement will be modified so as to give effect to the intent of the Parties to the maximum possible extent. The remaining provisions of this Agreement shall remain in full force and effect.

11.10 Entire Agreement; Construction. This Agreement constitutes the complete and exclusive agreement between the Parties and supersedes any and all prior communications, representations and understandings, whether written or oral. There are no third-party beneficiaries of Customer. Section headings are for convenience only and shall not affect interpretation of the relevant section. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding on the Parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language. This Agreement may be executed in counterparts, each of which shall be considered an original, but all of which together shall constitute the same instrument. Each Party expressly agrees to the use and acceptance of signatures by digital or other electronic means. Execution and delivery of this Agreement may be evidenced by facsimile or PDF (Portable Document Format) and shall hold the same force and effect as an original signature for purposes of binding the Parties.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have executed this Agreement as of the Effective Date.

ACCELLION USA, LLC

CUSTOMER: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____