

ACCELLION SOLUTIONS LICENSE AGREEMENT

THIS ACCELLION SOLUTIONS LICENSE AGREEMENT (THE "AGREEMENT") APPLIES TO THE USE OF ANY SOFTWARE PROVIDED DIRECTLY OR INDIRECTLY BY ACCELLION, INC. ("ACCELLION"), A DELAWARE CORPORATION WITH A PLACE OF BUSINESS AT 1804 EMBARCADERO PLACE, SUITE 200, PALO ALTO, CA 94303., YOU AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT. A CONTRACT IS THEN FORMED BETWEEN ACCELLION AND GSA SCHEDULE CONTRACT CUSTOMER WHICH YOU REPRESENT ("CUSTOMER").

1. Accellion Software; Ordering.

1.1 Accellion Software. Accellion software products are licensed on a subscription basis and are made available in 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 a GSA Customer Purchase Order (defined below).

1.2 Order Process. Orders for Accellion software and services may be made, through GSA Customer Purchase Orders placed directly with Accellion, or through orders placed with an Accellion authorized reseller ("**Channel Partner**"). An order becomes part of this Agreement upon acceptance of the order by Accellion or a Channel Partner (the accepted order referred to as the "**Order**"). 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" and no other terms and conditions in such documents shall apply to the relationship of Parties.

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. Applicable Terms.

2.1

Trial Versions. If Customer has ordered or downloaded a trial version of Accellion software, then the provisions of Sections 4.2, 5, 6.3, 8.1, 8.3, 9.2, 9.3, 9.4 and 12. shall not apply during the trial, but shall be effective upon the execution of a new GSA Customer Purchase Order.

2.2 Accounts for Web Orders. This Section 2.3 applies to Orders placed online with Accellion. Customer represents that the account information provided upon registration ("**Account Info**") is accurate, current and complete and that it will maintain Account Info current at all times. Customer is solely liable for use of and access to the account and Accellion shall not have any liability to Customer for unauthorized access or use of the account. Account Info is protected by Accellion's Privacy Policy. If Customer sets up an account using an email address with an email domain of an Accellion Solutions licensee (e.g. where Customer's employer is already an Accellion Solutions licensee), then Customer consents to Accellion's disclosure of Customer's usage information to such party.

3. Definitions. Unless otherwise specified, capitalized terms used in this Agreement will have the meanings attributed to them in this Section 3.

"**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 4.5.

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"**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 Designated User licenses as set forth on the applicable Order, plus any additional True-Up Users added pursuant to Section 6.3 below. Designated Users consist of, Customer's employees, agents, consultants and/or independent contractors (collectively referred to as "employees" hereinafter)

"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 GSA Customer Purchase Order the date Accellion makes the software available to Customer for download or, for software provided on a physical appliance, the date of shipment.

"Hardware" means computer equipment, if any, purchased from Accellion by Customer.

"Hosted Services" means the remote access and use of a hosted version of the Accellion Solution as hosted by Accellion, excluding Web Orders.

"License Term" means the subscription period for use of the Accellion Solution, as identified on the applicable Order. Each renewal is subject to execution of a separate GSA Customer Purchase Order. For trial versions, the License Term period shall be for the period of forty-five (45) days unless otherwise indicated by Accellion.

"Maintenance Support Services" means the support services provided by Accellion to Customer in accordance with the applicable Maintenance Support Policy as described in Section 5.

"Party" means either Customer or Accellion and **"Parties"** means both.

Customer and Accellion. **"Release"** means Accellion software that is

subject to the execution of a new or modified GSA Customer Purchase

Order.

"Server Software" means the object code server software versions of the Accellion Solution, as identified on the applicable Order.

"Update" means additions, upgrades, or modifications to the Accellion Solution licensed by Customer and provided by Accellion under this Agreement. Updates do not include Releases.

4. License Terms.

4.1 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 for Customer's internal business purposes to: (a) for each Designated User, install and use the Client Software on supported environments for up to the number of authorized Designated Users set forth on an Order Form; 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.

4.2 Hosting.

(a) By Accellion. If Hosted Services are ordered by Customer, they are provided pursuant to the terms of Accellion's Hosting Service Level Agreement included as Exhibit A hereto.

(b) By Customer's Outsourced Provider. For virtual versions of the Accellion Solution and versions provided with Hardware,

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 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 designate a single point of contact at Outsourced Provider for any maintenance and technical support matters arising under this Agreement and provide written notice of the name and contact information for such contact to Accellion. In order to provide warranty and Maintenance Support Services, Accellion requires both reasonable remote and on-site access to the Accellion Solution, subject to Government security requirements.

4.3 License Restrictions. Except as set forth in an Order or this Agreement, 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. Customer shall not make or permit the making of any modifications, additions or enhancements to the Accellion Solution, or cause or permit the disassembly, decompilation or reverse engineering of the Accellion Solution in whole or in part except to the extent such restriction is prohibited by applicable federal law. Except as expressly authorized by Accellion in writing, 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. 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. Licensee 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.

4.4 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.

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

Maintenance Support Services. Except for Web Orders, the Accellion Solution is provided with either Standard maintenance and support or Enterprise maintenance and support, as provided on the applicable Order and is **provided for the License Term** Maintenance Support Services shall renew in conjunction with execution of a new GSA Customer Purchase Order. 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.

5.

6. Payment: True-Up Users.

Payment. Customer shall pay the fees specified in the GSA Schedule Price List and the Order, subject to the terms and conditions stated therein.

. 6.2 Taxes are subject to FAR 52.212-4(k) which provides that the contract price shall include all federal, state and local taxes and duties. Accellion shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Accellion or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

6.1 True-Up Users. If permitted on the Order, Customer may exceed the number of licensed Designated Users by the maximum number permitted on the Order (such additional users referred to as "**True-Up Users**"), provided that Customer notify Accellion of the number of True-Up Users promptly following the end of each calendar quarter in which Customer has 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. Such prorated amount includes charges for the calendar quarter when True-Up Users commenced using the Accellion Solution 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 reasonable prior notice, subject to Government security requirements to enter the premises under Customer's possession or control during normal business hours, or, with Customer's prior consent, not to be unreasonably withheld, to electronically access the Accellion Solution, or, with respect to Hosting Services and Web Orders, to monitor use, to verify Customer's compliance with this Agreement. If the contractor's audit reveals any overuse of the software licenses granted to the GSA Customer, the contractor will provide immediate notice to the GSA Customer of the alleged deficiency and may invoice the GSA Customer for the number of licenses required to bring it into compliance under this Agreement.

6.2 Automated Reporting. Subject to Government security requirements, the Server Software will periodically transmit technical data to Accellion. That information 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 of and type of messaging senders and recipients, (ii) account usage information, (iii) technical data about messaging transmissions and management; and (iv) the type of Accellion Solution features used and related data. Customer will not in any way attempt to prevent the transmission or delivery of such usage data. Accellion uses such data only for Accellion's own internal business purposes. 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 is revealed, or (b) as required by applicable federal law.

Confidentiality. The Parties acknowledge that by reason of their relationship under this Agreement, they may have access to and acquire Confidential Information of the other Party. Each Party receiving Confidential Information (the "**Receiving Party**") agrees to maintain all such Confidential Information received from the other Party (the "**Disclosing Party**"), both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the Disclosing Party. When the end user is an instrumentality of the U.S. Government, neither this EULA nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential

Information will continue to be subject to the confidentiality obligations of this Agreement.

The Receiving Party further agrees to use the Confidential Information only for the purpose of performing this Agreement. Notwithstanding the foregoing, the obligations set forth herein shall not apply to Confidential Information which: (i) is or becomes a matter of public knowledge through no fault of or action by the Receiving Party; (ii) was lawfully in the Receiving Party's possession prior to disclosure by the Disclosing Party; (iii) subsequent to disclosure, is rightfully obtained by the Receiving Party from a third party who is lawfully in possession of such Confidential Information without restriction; (iv) is independently developed by the Receiving Party without resort to the Confidential Information; or (v) is required by law or judicial order, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such required disclosure in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent the disclosure. Receiving Party shall reasonably cooperate with the Disclosing Party's efforts to secure such a protective order or other legal remedy to prevent the disclosure

7. Limited Warranties and Disclaimer.

7.1 Limited Accellion Solution and Hardware Performance Warranty.

(a) Warranty. Accellion warrants to Customer that: (i) the media on which the Accellion Solution is furnished under normal use will be free from defects in materials and workmanship for a period of thirty (30) days from the date it is furnished to Customer; (ii) the Hardware sold to Customer, if any, will be free from defects in materials and workmanship for a period of one (1) year from the date it is furnished to Customer; and (iii) the Accellion Solution and Open Source Software will operate in substantial conformance with the Documentation for a period of thirty (30) days after the date the original Accellion Solution identified on the Order is furnished to Customer.

(b) Remedy. Accellion's entire liability and Customer's exclusive remedy under this warranty shall be replacement or repair of the defective media, Hardware or Accellion Solution that does not meet Accellion's limited warranty. Notwithstanding the foregoing, 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), Accellion may, at its sole option, terminate this Agreement, in which case: (i) Accellion shall (a) refund all license fees received by Accellion for the Accellion Solution (and Hardware fees, if any); and (b) the fees received by Accellion for the unexpired term of Maintenance Support Services, and (ii) Customer shall (a) uninstall and destroy the nonconforming Accellion Solution and certify in writing that it has done the same; and (b) return the Hardware, if any, at Accellion's expense. Accellion is not liable under any warranty or otherwise for defects or liability caused by the use of the Accellion Solution or Hardware 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 pursuant to FAR 52.212-4(f). 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 of the Accellion Solution, the Accellion Solution will be free from any viruses, spyware, trojans, or disabling or malicious code.

7.3 Limited Services Warranty. Accellion warrants that all installation or professional services provided by Accellion hereunder will be of a professional quality and will conform to generally accepted industry standards. This warranty shall be

valid for thirty (30) days from the completion of the applicable services. 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 service.

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 THEN THOSE EXPRESSLY SET FORTH HEREIN.

8. Indemnification.

8.1 Accellion Indemnity. Accellion will defend any action brought against Customer to the extent that it is based upon a claim that the Accellion Solution, as provided by Accellion to Customer (directly or through a Channel Partner) infringes such third-party's U.S. patent or foreign equivalent thereof 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 in settlement thereof or attributable to such claim that are finally awarded against Customer; provided that Customer will give Accellion: prompt written notice of such Claim, (i) Accellion shall give all cooperation and assistance reasonably requested by the Government in the defense of the Claim, at Accellion's sole expense, and (iii) an opportunity to intervene in any litigation, at its own expense, through counsel of its choosing.

. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

8.2 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.

8.3 Remedies. If Accellion determines that a third party claim may substantially interfere with Customer's use of the Accellion Solution, Accellion, at its sole discretion, 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) work with the Government to obtain a license for Customer to continue use of the Accellion Solution, and pay any additional fee required for such license; or (iv) if none of the foregoing alternatives are commercially reasonable, Accellion may terminate the license for the infringing Accellion Solution, in which case (a) Accellion shall refund a pro rata portion of all fees received by Accellion for the Accellion Solution as measured over the License Term; and (b) Customer shall uninstall and destroy the nonconforming Accellion Solution and certify in writing that it has done the same.

Limitation of Liability. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS HEREIN, FOR A BREACH OF SECTION 7 (CONFIDENTIALITY) OR FOR CUSTOMER'S INTENTIONAL BREACH OF THE LICENSES GRANTED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY, , 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. WITHOUT LIMITING THE FOREGOING IN THIS SECTION, EXCEPT FOR A BREACH OF SECTION 7 OF THIS AGREEMENT (CONFIDENTIALITY), 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 ALLOCATES THE RISK BETWEEN ACCELLION AND CUSTOMER. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Accellion's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided the contract.

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9 **Term and Termination.**

9.2 Term. This Agreement commences on the Effective Date and, unless terminated as set forth in the FAR, the underlying GSA Schedule Contract and/or the applicable GSA Customer Purchase Order , shall continue for the License Term on the applicable Order

Termination When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, the Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer

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 a representative of Customer certifying compliance with the foregoing. 4.3, 4.4, 4.5, 7, 8, 9, 10, 11.3 and 12

10 Miscellaneous.

10.2 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.

Assignment. Assignment is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013). This Agreement shall bind the Parties and their permitted successors and assigns.

10.3 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 hereunder.

Force Majeure. Pursuant to FAR 52.212-4(f), neither Party will incur any liability to the other on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement, if such delay or failure is caused in whole or in part, by events, occurrences, or causes beyond the control of such Party. Such events, occurrences or causes will include, without limitation acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers.

10.4 Export. Customer acknowledges that the Accellion Solution is subject to United States laws governing import, export, distribution and use. Customer is responsible for its compliance and the Designated Users' compliance with United States 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 (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.

10.5 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 252.227.7015 and 252.227.7202 of the DoD Supplement to the Federal Acquisition Regulations ("DFARS") or any successor regulations, and FAR 52.227-14 "Rights in Data" (Dec. 2007). The Government is acquiring only the usage rights specifically granted in this Agreement.

10.6 Governing Law. This Agreement shall be governed by

the Federal laws of the United States, without reference to conflict of laws principles. 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.

10.7 Consent to use Customer Data. Customer acknowledges that for Hosted Services, Accellion may transfer Account Info and Customer Data in the United States of America and may process and store Account Info and Customer Data therein.

10.8 Severability. If any provision of this Agreement is finally determined to be contrary to, prohibited by, or invalid under applicable federal laws or regulations, the remaining provisions of this Agreement shall remain in full force and effect.

10.9 Entire Agreement: Construction. This Agreement, the underlying GSA Schedule Contract, the Schedule Price List and any applicable GSA Customer Purchase Orders constitute the complete and exclusive agreement between the parties and supersede any and all prior communications, representations and understandings, whether written or oral. There are no third-party beneficiaries of either party. This Agreement shall not be amended or modified except in writing signed by duly authorized representatives of the Parties. Section headings are for convenience only and shall not affect interpretation of the relevant section. All notices must be either sent by overnight courier, by registered or certified mail, return receipt requested, or served personally. Notices will be deemed effective as of the date of delivery if sent overnight courier, five (5) days after mailing if sent by mail, or the date delivered if served personally. 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.

10.10 Storage and Bandwidth Fees. For the hosted version of the Accellion Solution, Customer's use is subject to storage and bandwidth limitations. Customer may review Customer's storage and bandwidth usage through the Admin Console. To purchase additional bandwidth and/or storage the GSA Customer must execute a new or modified GSA Customer Purchase Order.

10.11 Communications from Accellion. Customer understands and agrees that Customer and Designated Users may receive certain communications from Accellion, such as service announcements and administrative messages, and that Customer and Designated Users will not be able to opt out of receiving them.

10.12 Restrictions. Customer **acknowledges and** agrees that Customer, Designated Users and other users with access to shared folders: (i) will not use the Accellion Solution to transmit any communications or messages

that constitute spam, are obscene, abusive, harassing, threatening, racist, malicious, illegal, fraudulent, defamatory, libelous, harmful to minors, or that violate or infringe the rights of third parties; and (ii) will comply with policies applicable to the hosted version of the Accellion Solution as made available to Customer by Accellion from time to time.

10.13 Representations and Warranties. Customer represents and warrants to Accellion that: (i) Customer shall comply with all export and import laws, rules, regulations and restrictions of the United States; (ii) Customer, Designated Users, and other users with access to shared folders have all necessary rights to any data stored on or sent with the Accellion Solution ("Customer Data") and that use of Customer Data as contemplated herein does not violate any third party rights; and (iii) Customer hereby grants Accellion and its contractors the right to use, copy, cache and transmit Customer's Data in conjunction with Customer's use of the Accellion Solution.

10.14 Termination.

Termination. When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Accellion shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(a) Effect of Termination. Upon expiration or termination, the licenses granted to Customer by Accellion shall cease, Customer's account will be terminated and Customer will no longer be able to use the Accellion Solution. In addition to the terms identified in shall survive expiration or termination of this Agreement.

Exhibit A

HOSTING SERVICE LEVEL AGREEMENT

1. **Hosting Services Requirements.** Customer acknowledges and agrees that it and Designated Users and other users with access to shared folders and/or workspaces: (i) will not use the Hosted Services to transmit or store any communications or files that constitute spam, are obscene, abusive, harassing, threatening, racist, malicious, illegal, fraudulent, defamatory, libelous, harmful to minors, that violate or infringe the rights of third parties; and (ii) will comply with acceptable use policies applicable to the Hosted Services as required by hosting providers as made available to you by Accellion from time to time. Customer represents and warrants to Accellion and its hosting providers that Customer, Designated Users, and other users with access to shared folders and/or workspaces have all necessary rights to any data and information stored on or sent with the Hosted Services (“*Customer Data*”) and that use of Customer Data as contemplated herein does not violate any third party rights; and (iii) Customer hereby grants Accellion and its hosting providers the right to use, copy, cache and transmit Customer Data in conjunction with Customer’s use of the Hosted Services. Customer acknowledges that Hosted Services Accellion may transfer and process Customer Data within and without the European Union and shall obtain all necessary consents from Designated Users for the same.

2. **Hosting Provider Capabilities.** Accellion utilizes the secure data centers provided by Amazon Web Services, Inc. (“AWS”). AWS continually manages risk and undergoes recurring assessments to ensure compliance with industry standards as more fully described at <https://aws.amazon.com/security/>.

3. **Up-Time Commitment.** If Customer has elected to utilize Hosting Services from Accellion, then Accellion agrees that Hosting Services will be available 99.9% of the time, seven (7) days per week, subject to the exclusions below (the “*Up-Time Commitment*”). The Up-Time Commitment will be measured annually during the License Term, based upon the trailing period of the License Term prior to the date of the reported unavailability. If Accellion does not meet the Up-Time Commitment, Customer will be entitled to the credits (“*Service Credits*”) as Customer sole and exclusive remedy for the performance of Hosting Services, as outlined below.

Calculation of the Up-Time Commitment shall exclude unavailability of the Hosted Services caused by any of the following:

- Scheduled, announced downtime for maintenance or unscheduled downtime for emergency maintenance;
- Failures in the Internet or failure of other items that are outside Accellion’s reasonable control;
- Hardware, communication lines or application problems (*e.g.*, Internet, ISDN, DSL, etc.) of Customer that prevent/disrupt access;
- Your violation of hosting provider acceptable use policies; or
- Any downtime caused by the action or inaction of Customer.

4. **Service Credits.** If Accellion fails to meet the Up-Time Commitment, Customer shall have the right, as Customer’s sole remedy for such failure, to receive Service Credits pro rata to the amount of time Hosted Services are unavailable, subject to the exclusions above, after Service Credits are claimed in writing by Customer and the corresponding unavailability is confirmed by Accellion with the hosting provider. By way of example, if such unavailability is for twenty-four (24) hours, Customer shall be entitled to Service Credits equal to 1/365th of fees applicable to an annual License Term. Service Credits will be

applied to any amounts due from Customer or if no amounts are due, Accellion shall pay Customer an amount equal to the dollar amount of Service Credits within thirty (30) days following the month during which Service Credits are earned. Service Credits shall not be awarded unless claimed within fifteen (15) days following the end of the month during which the corresponding unavailability occurred.