

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 3.52**  
(ID # 19547)

**MEETING DATE:**  
Tuesday, August 30, 2022

**FROM :** PUBLIC SOCIAL SERVICES:

**SUBJECT:** DEPARTMENT OF PUBLIC SOCIAL SERVICES (DPSS): Approve Professional Services Agreement DPSS-0004354 with Accellion USA LLC for IHSS Portal Secure File Sharing Services, without seeking competitive bids, for five (5) years, August 30, 2022 through June 30, 2027; All Districts. [Total Cost \$421,657; and up to \$84,331 in additional compensation; Funding: 47% Federal, 25% State, 28% Realignment]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve Professional Services Agreement DPSS-0004354 with Accellion USA LLC for IHSS Portal Secure File Sharing Services, without seeking competitive bids for a total aggregate amount of \$421,657 for five (5) years, August 30, 2022 through June 30, 2027; and authorize the Chair of the Board to sign the Agreement on behalf of the County; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved as to form by County Counsel to: (a) sign amendments that make modifications to the statement of work that stay within the intent of the Agreement, and (b) sign amendments to the compensation provisions that do not exceed the sum total of twenty percent (20%) of the total annual cost of the contract.

**ACTION:Policy**


  
Sayori Baldwin, DPSS Director 8/8/2022

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Spiegel, seconded by Supervisor Perez and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
Nays: None  
Absent: None  
Date: August 30, 2022  
xc: DPSS

Kecia R. Harper  
Clerk of the Board  
By:   
Deputy



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<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$77,000	\$83,000	\$421,657	\$0
<b>NET COUNTY COST</b>	\$0	\$0	\$0	\$0
<b>SOURCE OF FUNDS:</b> 47% Federal, 25% State, 28% Realignment			<b>Budget Adjustment:</b>	No
			<b>For Fiscal Year:</b>	22/23-26/27

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

DPSS Adult Services Division (ASD) is requesting a five (5) year Agreement for IHSS Portal Secure File Sharing Services. Riverside County Information Technology (RCIT) recommends that DPSS request Accellion’s Kiteworks secure file sharing services for the ASD In-Home Supportive Services (IHSS) program to offer a more secure way for external clients and providers to send sensitive confidential documents over the Internet. Accellion’s Kiteworks platform secures sensitive content communications over channels such as email, file share, file transfer, managed file transfer, web forms, and application programming interfaces (APIs). The Kiteworks Managed File Transfer (MFT) solution provides secure data transfers, data encryption and ensures PII data and HIPAA regulatory compliance. MFT offers a preemptive security strategy with real-time monitoring, and validation security policies and controls to protect data in transit or at rest.

This software will replace the IHSSHOME@rivco.org email address and staff will receive tickets in the IHSS HOME Ticketing System with attachments that have been encrypted, allowing for a more secure way to receive sensitive documents.

**Impact on Residents and Businesses**

Approval of this Agreement will allow clients and providers to upload confidential documents to the Riverside County System and allow DPSS to ensure that all sensitive confidential information is secure.

**Additional Fiscal Information**

The total annual payments to Accellion shall not exceed:

<b>FISCAL YEAR PERIOD</b>	<b>ANNUAL PAYMENT</b>
August 30, 2022 through June 30, 2023	\$77,000.00
July 1, 2023 through June 30, 2024	\$83,000.00
July 1, 2024 through June 30, 2025	\$83,000.00
July 1, 2025 through June 30, 2026	\$87,150.00







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July 1, 2026 through June 30, 2027	\$91,507.50
Total:	\$421,657.50

There is no County cost for this software.

**Contract History and Price Reasonableness**

With RCIT's familiarity with the Accellion's Kiteworks platform, it will be more cost effective and reasonable for DPSS to contract with Accellion. Additionally, Accellion's Kiteworks interfacing system works directly with the County's system. RCIT strongly urges DPSS to procure this system to protect the County platform when clients and providers share confidential information. Since using another vendor may have higher implementation costs, it will benefit DPSS to use Accellion's Kiteworks. Accellion's Kiteworks will have reduced IT support costs and business agility with rapid return on investment. Using Accellion's Kiteworks system will be a cost effective and reasonable solution for DPSS because of the reduced training and planning costs.

**ATTACHMENTS:**

Attachment A: Accellion USA LLC Agreement for IHSS Portal Secure File Sharing Services

Attachment B: Single Source Justification

Attachment C: H-11 TSOC Approval

  
Suzanna Hinkle, Assistant Director of Purchasing and Fleet Service

8/10/2022

  
Brianna Lontajo, Principal Management Analyst

8/18/2022

  
Cynthia M. Guazel, Chief Deputy County Counsel

8/17/2022

  
Jim Smith, Chief Information Officer

8/8/2022



## ACCELLION SOLUTIONS LICENSE AGREEMENT

This Accellion Solutions License Agreement (the “*Agreement*”) is made as of August 30, 2022, (the “*Agreement 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 the County of Riverside, a political subdivision of the State of California (“*Customer*”), (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. **Definitions.** Unless otherwise specified, capitalized terms used in this Agreement will have the meanings attributed to them in this Section 2.

1.1 “*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.

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

1.3 “*Agreement*” refers to the terms and conditions, schedules, and attachments included herein.

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

1.5 “*Contractor*” refers to Accellion USA LLC including its employees, agents, representatives, subcontractors, and suppliers.

1.6 “*Customer*” refers to the County of Riverside.

1.7 “*Designated User*” means an individual authorized by Customer to use the Accellion Solution pursuant to this Agreement and the applicable Order. Designated User 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. The number of Designated User for whom Customer has purchased rights to use the Accellion Solution during the License Term is set forth in the applicable Order and is calculated on an annual basis, except that Customer may reassign a Designated User to a different individual once within a particular year of the License Term only in the event that an individual Designated User or an individual Designated User’s role is permanently replaced with a different individual and all data associated with the replaced Designated User is deleted from the Accellion Solution.

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

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

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

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

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

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

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



2. **Description of Services.**

Accellion shall provide all services at the prices stated in Schedule A, Payment Provisions.

3. **Compensation.**

Customer shall pay Accellion for services performed, products provided, or expenses incurred in accordance with the rates set forth in Schedule A (Payment Provisions). Customer is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Schedule A, Customer shall not be responsible for payment of any of Accellion's expenses related to this Agreement.

4. **Availability of Funds/Non-Appropriation of Funds**

The obligation of Customer for payment under this Agreement beyond the current fiscal year is contingent upon and limited by the availability of County funding from which payment can be made. There shall be no legal liability for payment on the part of Customer beyond June 30 of each year unless funds are made available for such payment by the County Board of Supervisors. In the event such funds are not forthcoming for any reason, Customer shall notify Accellion in writing thirty (30) days prior to the expiration of that License Term and this Agreement shall be deemed terminated and be of no further force or effect in accordance with terms of this Agreement. Customer shall make all payments to Accellion that were properly earned prior to the unavailability of funding.

5. **License Terms.**

5.1 **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.

5.2 **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.

5.3 **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.

5.4 **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.

5.5 **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.

6. **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.

## 7. **Confidentiality.**

7.1 **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.

7.2 **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 7.3, 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 attached as Attachment II to this Agreement.

7.3 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.

7.4 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

## 8. **Limited Warranties and Disclaimer.**

### 8.1 Limited Accellion Solution Performance Warranty.

(a) Warranty. Accellion warrants to Customer that for a period of ninety (90) 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.

8.2 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.

8.3 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.

8.4 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.

## 9. Indemnification.

9.1 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.

9.2 Accellion Indemnity. Accellion agrees to indemnify and hold harmless Customer, its departments, agencies and districts, including their officers, employees and agents (collectively "*County Indemnitees*"), from any liability, damage, claim or action based upon or related to any services or work of Accellion (including its officers, employees, agents, subcontractors or suppliers) directly arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury or death. Accellion shall, at its sole expense and cost including but not limited to, attorney fees, cost of investigation, defense, and settlements or awards, defend County Indemnitees in any such claim or action. Accellion shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of Customer which shall not be unreasonably withheld; and shall have the right to adjust, settle, or compromise any such claim or action so long as that does not compromise Customer's indemnification obligation. Accellion's obligation hereunder shall be satisfied when Accellion has provided Customer the appropriate form of dismissal relieving Customer from any liability for the action or claim made. The insurance requirements stated in this Agreement shall in no way limit or circumscribe Accellion's obligations to indemnify and hold Customer harmless.

9.3 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.

9.4 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.



**10. 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, 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. PARTIES' AGGREGATE LIABILITY FOR DAMAGES SHALL IN NO EVENT EXCEED TWO TIMES 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.

**11. Insurance.**

11.1 Without limiting or diminishing Accellion's obligation to indemnify or hold the Customer harmless, Accellion shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the Customer herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

11.2 Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an AM BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County's Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

11.3 Accellion's insurance carrier(s) must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of the County's Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to Customer, and at the election of the County's Risk Manager, Accellion's carriers shall either; 1) reduce or eliminate such self-insured retention as respects to this Agreement with Customer, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

11.4 Accellion shall cause Accellion's insurance carrier(s) to furnish the Customer with either 1) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein, or 2) if requested to do so orally or in writing by the County Risk Manager, provide original certified copies of policies, including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) calendar days written notice shall be given to the Customer prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the Customer receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. Accellion shall not commence operations until the Customer has been furnished original certificate(s) of insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

11.5 It is understood and agreed to by the parties hereto that Accellion's insurance shall be construed as primary



insurance, and Customer's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

11.6 Accellion shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

11.7 The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to Customer.

11.8 Accellion agrees to notify Customer of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

11.9 **CYBER LIABILITY.** Accellion shall procure and maintain for the duration of the contract insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work hereunder by Accellion, its agents, representatives, or employees. Accellion shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data. Accellion shall procure and maintain cyber liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Accellion in this Agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. If Accellion maintains broader coverage and/or higher limits than the minimums shown above, COUNTY requires and shall be entitled to the broader coverage and/or higher limits maintained by Accellion. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Customer.

11.10 **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Accellion's performance of its obligations hereunder. Policy shall name the Customer as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

11.11 **WORKER'S COMPENSATION.** If Accellion has employees as defined by the State of California, the Accellion shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident.

## **12. Period of Performance and Termination.**

12.1 **Period of Performance.** This Agreement shall be effective upon Agreement Date and shall continue for the License Term on the applicable Order through June 30, 2027, unless terminated earlier, or Customer discontinues its use of the Software. Unless otherwise expressly set forth on the Order the License Term shall be automatically renewed for the same period unless the Customer provides Accellion with written notice of its intention to not 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. Accellion shall commence performance upon the Agreement Date and shall diligently and continuously perform thereafter.

12.2 **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.

12.3 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.

### 13. Miscellaneous.

13.1 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.

13.2 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.

13.3 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.

13.4 Request for Waiver and Waiver of Breach. Waiver of any provision of this Agreement must be in writing and signed by authorized representatives of the parties. No waiver or breach of any provision of the terms and conditions herein shall be deemed, for any purpose, to be a waiver or a breach of any other provision hereof, or of a continuing or subsequent waiver or breach. Failure of Customer to require exact, full compliance with any terms of this Agreement shall not be construed as making any changes to the terms of this Agreement and does not prevent Customer from enforcing the terms of this Agreement.

#### 13.5 Records, Inspections and Audits

A. CONTRACTOR shall maintain auditable books, records, documents, and other evidence relating to costs and expenses to this Agreement. CONTRACTOR shall maintain these records for at least three (3) years after final payment has been made or until pending county, state, and federal audits are completed, whichever is later.

B. Any authorized county, state or the federal representative shall have access to all books, documents, papers, electronic data and other records they determine are necessary to perform an audit, evaluation, inspection, review, assessment, or examination. These representatives are authorized to obtain excerpts, transcripts and copies as they deem necessary and shall have the same right to monitor or inspect the work or services as COUNTY.

C. If CONTRACTOR disagrees with an audit, CONTRACTOR may employ a Certified Public Accountant (CPA) to prepare and file with COUNTY its own certified financial and compliance audit. CONTRACTOR shall not be reimbursed by COUNTY for such an audit regardless of the audit outcome.

D. CONTRACTOR shall establish sufficient procedures to self-monitor the quality of services/products under this Agreement and shall permit COUNTY or other inspector to assess and evaluate CONTRACTOR's performance at any time, upon reasonable notice to the CONTRACTOR.



### 13.6 Lobbying

A. CONTRACTOR shall ensure no federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant loan or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with such federal contract, grant, loan, or cooperative agreement, CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. CONTRACTOR shall require that the language of this certification be included in the award document for sub-awards at all tiers, including subcontracts, sub-grants, and contract under grants, loans, and cooperative agreements, and that all sub-recipients shall certify and disclose accordingly.

13.7 Adverse Government Action. In the event any action of any department, branch or bureau of the federal, state, or local government has a material adverse effect on either party in the performance of their obligations hereunder, then that party shall notify the other of the nature of this action, including in the notice a copy of the adverse action. The parties shall meet within thirty (30) calendar days and shall, in good faith, attempt to negotiate a modification to this Agreement that minimizes the adverse effect. Notwithstanding the provisions herein, if the parties fail to reach a negotiated -modification concerning the adverse action, then the affected party may terminate this Agreement by giving at least one hundred eighty (180) calendar days' notice or may terminate sooner if agreed to by both parties.

13.8 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 compliance under this Agreement. Any other purported assignment by either Party shall be null and void. This Agreement shall bind the Parties and their permitted successors and assigns.

13.9 Force Majeure. If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply. The foregoing shall not apply to Customer's payment and the mutual confidentiality obligations of the Parties.

13.10 Governing Law. This Agreement shall be governed by the laws of the State of California. Any legal action related to the interpretation or performance of this Agreement shall be filed only in the Superior Court for the State of California or the U.S. District Court located in Riverside, California. 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.

### 13.11 Disputes.

A. The Parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Each Party commits that in the event a dispute should arise under this Agreement or relating in any manner hereto, the Parties agree to attempt to mediate their dispute prior to the commencement of formal litigation (i.e., the filing of a lawsuit or other legal proceeding), using a third-party mediator. Any mediation shall take place in California in San Francisco, unless otherwise agreed to by the Parties. The costs of such mediation shall be equally divided between the Parties. Such mediation shall be conducted by each Party designating a duly authorized officer or other representative to represent the Party, with authority to bind the Party, and that the Parties agree to exchange informally such information as is reasonably necessary and relevant to the issues being mediated. If such mediation is unsuccessful, then either Party shall have the right to initiate litigation in accordance with the Agreement. All mediation



proceedings shall be confidential, and no information exchanged in such mediation shall be discoverable or admissible in any litigation involving the Parties. In the event a Party seeks equitable relief (such as injunctive relief or specific performance), or in the event of an approaching deadline prescribed by an applicable statute of limitation, then there shall be no requirement that such Party utilize the mediation process referred to herein.

13.12 Notices. All notices, claims, correspondence, or statements authorized or required by this Agreement shall be deemed effective three (3) business days after they are made in writing and deposited in the United States mail addressed as follows:

COUNTY:  
 Department of Public Social Services Contracts  
 Administration Unit  
 P.O.Box 7789  
 Riverside, CA 92513

Invoices and other financial documents: Department of  
 Public Social Services Fiscal/Management Reporting Unit  
 4060 County Circle Drive  
 Riverside, CA 92503  
 Email: [ClientServicesContracts@rivco.org](mailto:ClientServicesContracts@rivco.org)

CONTRACTOR:  
 Attn: Legal  
 Accellion USA LLC  
 1804Embarcadero Road, #200  
 Palo Alto, CA 94303  
[legal@kiteworks.com](mailto:legal@kiteworks.com)

CONTRACTOR "Remit To" address:  
 Accellion USA LLC  
 1804 Embarcadero Road, #200  
 Palo Alto, CA 94303

13.13 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.

13.14 Modification of Terms. This Agreement may be modified only by a written amendment signed by authorized representatives of both parties.

13.15 Signed in Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

13.16 Electronic Signatures. Each party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The parties further agree that the electronic signature(s) included herein are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.



13.17 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior or contemporaneous agreements of any kind or nature relating to the same subject matter shall be of no force or effect.

Signature Page to Follow



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

**ACCELLION USA, LLC**

By: 

Name: Jonathan Yaron

Title: Chairman & CEO

Date: Aug 11, 2022

**CUSTOMER: County of Riverside**

By: *Jeff Hewitt*

Name: Jeff Hewitt

Title: Chair, Board of Supervisors

Date: Aug 31, 2022

Approved as to Form  
County Counsel

By: *Katherine Wilkins*

Katherine Wilkins  
Deputy County Counsel

Date: Aug 17, 2022

ATTEST:  
KECIA R. HARPER, Clerk

By: *PRISCILLA A RASSO*  
DEPUTY



AUG 30 2022 *3.52*

Schedule A  
Payment Provisions

A.1 MAXIMUM AMOUNTS –ANNUAL AND AGGREGATE TOTALS

Total payment under this Agreement shall not exceed \$421,657.50 from August 30, 2022 through June 30, 2027.

Annual payments to Accellion shall not exceed:

FISCAL YEAR PERIOD	ANNUAL PAYMENT
August 30, 2022 through June 30, 2023	\$77,000.00
July 1, 2023 through June 30, 2024	\$83,000.00
July 1, 2024 through June 30, 2025	\$83,000.00
July 1, 2025 through June 30, 2026	\$87,150.00
July 1, 2026 through June 30, 2027	\$91,507.50
Total	\$421,657.50

A.2 PRODUCT LIST AND PRICING

Model	Description	Quantity	License Period	Year 1 Unit Price	Year 2 Unit Price	Year 3 Unit Price	Year 4 Unit Price	Year 5 Unit Price
KEHUDS	Kiteworks Enterprise Secure File Sharing Hosted Users with Developer Suite Support, 250 GB of storage and 500 GB of bandwidth	25	Upon Signature – June 30, 2027	\$420	\$454	\$454	\$476	\$499
KEHDSAPI	API + Portal	1	Upon Signature – June 30, 2027	\$50,000	\$54,000	\$54,000	\$56,700	\$59,535
KEHAV	Hosted Kiteworks Enterprise Anti-Virus	3	Upon Signature – June 30, 2027	\$500	\$540	\$540	\$567	\$595
KEHA	Additional Hosted Appliance	2	Upon Signature – June 30, 2027	\$5,000	\$5,400	\$5,400	\$5,670	\$5,953
KEHP	Private Hosted Instance	1	Upon Signature – June 30, 2027	\$5,000	\$5,400	\$5,400	\$5,670	\$5,953
KEHSVR-AV	Installation of a Hosted Kiteworks Server – KW-AZ-US-West		N/A	*\$7,500	\$0	\$0	\$0	\$0
KEW	On-site Workshop		N/A	*\$5,000	\$0	\$0	\$0	\$0

\*Installation and On-site Workshop is a one-time cost.



Invoices shall be sent to:

Department of Public Social Services  
 Fiscal/Management Reporting Unit  
 4060 County Circle Drive  
 Riverside, CA 92503  
[operatingservicescontractpayments@rivco.org](mailto:operatingservicescontractpayments@rivco.org)

1. Customer shall pay Accellion all fees payable annually upon receipt of DPSS Form 2076A, attached hereto and incorporated herein by this reference as Attachment III. Accellion must submit an invoice along with DPSS Form 2076A prior to issuance of payment. Also attached are instructions for completion of this form, attached hereto and incorporated herein by this reference as Attachment III.

2. Customer may delay payment if the required documentation referenced in this Section A.2 is not provided or other requirement are not met. All complete claims and invoices submitted in a timely manner shall be processed within forty-five (45) calendar days.

3. Customer's obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of Customer funding from which payment can be made, and invoices shall be rendered "monthly" in arrears. No legal liability on the part of the Customer shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, Customer shall immediately notify Accellion in writing; and this Agreement shall be deemed terminated and have no further force or effect.

#### A.3 ACCELLION SOFTWARE; ORDERING.

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).

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.

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. Accellion Kiteworks Enterprise Package shall include: Secure File Sharing via Shared Folders and Email, Web and Mobile Apps, Microsoft Outlook Plugin and Office 365 Integration, Sync, Admin Tools, Remote Wipe, Reporting and Auditing, LDAP/AD, and Single Sign-On Integration, Excess hosted storage and Excess hosted bandwidth, System updates with improved technology.

#### A.4 PAYMENT; TRUE-UP USERS.

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 forty-five (45) 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. In the State of California, Government agencies are exempted from paying excess interest and late charges, per Government Codes, Section 926.10.

2. 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.

3. 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.



Order Form  
This Order Form is a template only.



**ORDER FORM**  
Accellion Secure File Sharing Solutions

Order Form Date:  
Expiration Date:  
Account #:  
Order #:

**CUSTOMER**

Accounts Payable:  
Attn:  
Address:  
Phone:  
Fax:  
Email:

Headquarters:  
Attn:  
Address:  
Phone:  
Fax:  
Email:

Ship To:  
Attn:  
Address:  
Phone: Fax:  
Email:  
License Recipient

Purchase Order # (Required):

Model	Description	License Period	Term	QTY	Unit Price	Total Price	Discount	Total Fees (\$)
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Annual

Total Fees Due (excluding applicable taxes, duties, and actual shipping) USD

Deployment ID:

Accellion:	Accellion USA, LLC
Located at:	1804 Embarcadero Road, #200, Palo Alto, CA, US, 94303
Accellion Account Executive:	FAX TO: 650.350.4335 or EMAIL TO: <a href="mailto:orders@accellion.com">orders@accellion.com</a>

**Order Form Terms and Conditions**

1. **Incorporation of Online License Agreement.** This Order Form is subject to and incorporates by reference the terms and conditions of the Accellion Solutions License Agreement ("Agreement") available online at <https://www.accellion.com/legal/asla19-1/>. All capitalized terms used herein have the meanings stated in the Agreement, unless stated otherwise.
2. **Term and Payment Terms.** The duration of this Order Form is for the "License Term" set forth above. Upon expiration of the initial License Term or a subsequent License Term, this Order Form shall automatically renew for an additional License Term at Accellion's then-current rates unless either party provides written notice of its intent not to renew at least thirty (30) days prior to the end of the then-current License Term. Payment terms are net thirty (30) days from invoice date. All taxes, other than those based on Accellion's net income, are Customer's responsibility. As a courtesy, for the initial License Term Accellion will send an invoice on or around the Shipment Date (defined below).
3. **Maintenance Support Services-Enterprise.** Maintenance Support Services are included in the annual end-user subscription fees and are provided in accordance with Accellion's then-current Enterprise Support Policy. Accellion's Maintenance Support Policy in effect as of the date of this Order Form is set forth at <https://www.accellion.com/legal/maintenance-support-policy-enterprise/>.
4. **End User Licenses.** If applicable, Licensee may exceed the initial number of users licensed above and thereafter pay additional fees. Accellion will invoice Licensee for those additional users at a prorated amount of the annual rate stated in the Order Form above. Upon payment, Licensee will be licensed for the additional users going forward.
5. **Purchase Order.** If Customer's procurement processes require the issuance of a purchase order, then on or before the Shipment Date, Customer shall issue a purchase order ("Purchase Order") to Accellion with the Purchase Order number set forth above. The parties agree that none of the terms and conditions of any such Purchase Order (or subsequent Purchase Orders from customer) shall apply to or modify the Agreement between the parties as documented in this Order Form and the Agreement, and that any terms or conditions in such Purchase Orders are null and void.
6. **Shipment.** For purposes of this Order Form, the date of shipment of the Product to Customer, or, for downloadable software, the date it is made available for download, shall be referred to hereinafter as the "Shipment Date". No shipment will occur prior to Accellion's receipt of a complete and duly executed Order Form. If credit is denied, shipment will occur once payment has been received.
7. **Authority.** By signing this Order Form, Customer represents and warrants that it has read and understands the Accellion Solutions License Agreement that is incorporated by reference herein and agrees to be bound by its terms.
8. **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.

**Accellion**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

\_\_\_\_\_

**Customer**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PO number (please write in N/A if your organization does not require POs to pay the invoice for this order): \_\_\_\_\_

\_\_\_\_\_

Please verify headquarters, billing & shipping information above



Attachment II  
Accellion HIPAA Business Associate Agreement

This Agreement (the "Agreement") is made as of August \_\_\_\_\_, 2022 (the "Effective Date") by and between \_\_\_\_\_ ("Covered Entity") and Accellion USA, LLC ("Accellion").

**Limited Scope of Agreement.** Covered Entity may wish to disclose certain information to Accellion pursuant to Section 13 of the Software Subscription License Agreement (the "License Agreement"), which is incorporated herein by reference. In the event Covered Entity discloses such information, such information may constitute Protected Health Information ("PHI"), as defined under Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104- 191 (the "Act" and together with regulations issued by the U.S. Department of Health and Human Services, the "HIPAA Regulations"). *In the ordinary course of the License Agreement between Covered Entity and Accellion, where Covered Entity licenses the Kiteworks Solution from Accellion, Accellion is NOT a "Business Associate" as defined by HIPAA Regulations.* The Kiteworks Solution encrypts all data in transit, at rest, and at the individual file level. Even when Accellion hosts the Kiteworks Solution, only its customers have access to the unencrypted information and the encryption keys.. Thus, in the ordinary course of the License Agreement between Covered Entity and Accellion, Accellion has no possession or exposure to any information or data protected by HIPAA (or any other information processed by the Kiteworks Solution at Covered Entity). *Covered Entity and Accellion therefore agree that, in the ordinary course of the License Agreement, Accellion is not a "Business Associate" as defined by HIPAA Regulations.* Solely in the event Covered Entity follows the strictures of Section 7.2 of the LICENSE AGREEMENT, including, but not limited to, the requirement that—"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"—Accellion may be deemed a "Business Associate" and Covered Entity a "Covered Entity" as defined in the HIPAA Regulations, for the limited disclosure at issue and only if the documents or other information in question constitute those covered by the HIPAA Regulations *and* are actually processed by Accellion. This Agreement applies solely in the limited scenario contemplated by Section 4.2 of the LICENSE AGREEMENT to protect the privacy, and to provide for the security, of PHI in compliance with the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 ("HIPAA Privacy Rule"). *The ensuing provisions of the Agreement apply only to this limited situation; for all other scenarios under the License Agreement, Accellion is not a "Business Associate" of Covered Entity.* Capitalized terms herein shall have the meanings ascribed to them in this Agreement and the HIPAA Regulations.

**Confidentiality.** Accellion agrees:

- a. not to use or disclose PHI other than as permitted or required by the Agreement or as required by law;
- b. to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- c. to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- d. in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), to ensure that its agents, including any subcontractors, to whom it provides PHI received from or created by Accellion on behalf of Covered



Entity, agree to the same restrictions and conditions that apply to Accellion with respect to such information. In addition, Accellion agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Accellion to breach the terms of this Agreement; and

- e. to make its internal practices, books, and records available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance with the HIPAA Privacy Rule.

**Access to PHI.** Covered Entity acknowledges and agrees that since the nature of the services provided by Accellion do not enable Accellion to have access to PHI, and that it is the Covered Entity which accesses PHI directly:

- a. Accellion cannot make available PHI to the extent and in the manner required by Sections 164.504(e)(2)(ii)(E) and 164.524 of the HIPAA Privacy Rule;
- b. Accellion cannot make PHI available for amendment or incorporate any amendments to PHI in accordance with the requirements of Sections 164.504(e)(2)(ii)(F) and 164.526 of the HIPAA Privacy Rule; and
- c. Accellion cannot make PHI available for purposes of accounting of disclosures, as required by Sections 164.504(e)(2)(ii)(G) and 164.528 of the HIPAA Privacy Rule. These requirements shall be the sole responsibility of Covered Entity.

**Permitted Uses and Disclosure by Accellion.** Accellion may only use or disclose PHI:

- a. to carry out its legal responsibilities under this Agreement; or
- b. if required by law, provided that Accellion may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

**Term and Termination.**

- a. The term of this Agreement shall be for the duration of any license of Accellion software to Covered Entity (a "License Agreement"). This Agreement shall be coterminous with the License Agreement, subject to earlier termination as provided herein.
- b. Accellion authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Accellion has violated a material term of the Agreement and Accellion has not cured the breach or ended the violation within the time specified by Covered Entity, if any.
- c. Either party may terminate this Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA; or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- d. Upon termination of this Agreement for any reason, Accellion shall return and destroy all PHI received from Covered Entity (or created or received by Accellion on behalf of Covered Entity) that Accellion still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not



feasible, it shall continue to extend the protections of this Agreement to such information. The obligations of Accellion under this Section shall survive the termination of this Agreement.


**General.** If any provisions of this Agreement conflict with provisions in any other agreement between Covered Entity and Accellion (such as a Non-Disclosure Agreement or the LICENSE AGREEMENT), the provisions of this Agreement shall control. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by the parties. Covered Entity and Accellion are independent contractors. Neither party will have the right, power, or implied authority to create any obligation or duty on behalf of the other party. This Agreement shall be governed under the laws of the State of California, excluding its conflicts of law rules. This Agreement may be executed in counterparts, each of which shall be an original and together which shall constitute one and the same instrument. Facsimile and PDF copies of signatures hereto shall constitute originals for all purposes.

[SIGNATURE PAGE FOLLOWS]

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

ACCELLION USA, LLC

COVERED ENTITY

By: 

By: Jeff Hewitt

Name: Jonathan Yaron

Name: Jeff Hewitt

Title: Chairman & CEO

Title: Chair, Board of Supervisors

Date: Aug 11, 2022

Date: Aug 31, 2022



COUNTY OF RIVERSIDE  
DEPARTMENT OF PUBLIC SOCIAL SERVICES  
**CONTRACTOR PAYMENT REQUEST**

To: Riverside COUNTY  
Department of Public Social  
Services Attn: Management  
Reporting Unit 4060 COUNTY  
Circle Drive Riverside, CA 92503

From: Accellion USA LLC  
Remit to Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City, State and Zip Code  
\_\_\_\_\_  
Contract Number

Total amount requested \_\_\_\_\_ for the period of \_\_\_\_\_ 20 \_\_\_\_\_

Select Payment Type(s) Below:

Advance Payment \$ \_\_\_\_\_ (if allowed by Contract/MOU)       Actual Payment \$ \_\_\_\_\_ (Same amount as 2076B if needed)

Unit of Service Payment \$ \_\_\_\_\_

\_\_\_\_\_ (# of Units) x \_\_\_\_\_ (Unit Price) = (\$) \_\_\_\_\_

\_\_\_\_\_ (# of Units) x \_\_\_\_\_ (Unit Price) = (\$) \_\_\_\_\_

\_\_\_\_\_ (# of Units) x \_\_\_\_\_ (Unit Price) = (\$) \_\_\_\_\_

\_\_\_\_\_ (# of Units) x \_\_\_\_\_ (Unit Price) = \_\_\_\_\_

(\$)(# of Units) x \_\_\_\_\_ (Unit Price) = \_\_\_\_\_

(\$) \_\_\_\_\_

Any questions regarding this request should be directed to and authorized by:

\_\_\_\_\_  
Name Phone Number

**FOR DPSS USE ONLY (DO NOT WRITE BELOW THIS LINE)**

If amount authorized is different from the amount requested, please explain:

MRU Authorization \_\_\_\_\_ Date \_\_\_\_\_

Amount Authorized \_\_\_\_\_

Invoice Number \_\_\_\_\_

PO Number \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF PUBLIC SOCIAL SERVICES FORMS

Mailing Instructions: When completed, these forms will summarize all of your claims for payment. Your Claims Packet will include DPSS 2076A, 2076B (if required).

invoices, payroll verification, and copies of canceled checks attached, receipts, bank statements, sign-in sheets, daily logs, mileage logs, and other back-up documentation needed to comply with Contract/MOU.

Mail Claims Packet to address shown on upper left corner of DPSS 2076A. [see method, time, and schedule/condition of payments].  
(Please type or print information on all DPSS Forms.)

DPSS 2076A  
CONTRACTOR PAYMENT REQUEST

"Remit to Name"

The legal name of your agency.

"Address" "City, State, and Zip Code"

The remit to address used when this contract was established for your agency. All address changes must be submitted for processing prior to use.

"Contract Number"

Can be found on the first page of your contract.

"Amount Requested"

Fill in the total amount and billing period you are requesting payment for.

"Payment Type"

Check the box and enter the dollar amount for the type(s) of payment(s) you are requesting payment for.

"Any questions regarding..."

Fill in the name and phone number of the person to be contacted should any questions arise regarding your request for payment.

EVERYTHING BELOW THE THICK SOLID LINE IS FOR DPSS USE ONLY AND SHOULD BE LEFT BLANK.



