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This Agreement (the “Agreement”) is made as of _____, (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 7.2 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 Accellion Solution from Accellion, Accellion is NOT a “Business Associate” as defined by HIPAA Regulations.***

The Accellion Solution encrypts all data in transit, at rest, and at the individual file level. Even when Accellion hosts the Accellion Solution, only its customers have access to the unencrypted information and the encryption keys. Here, Accellion is not hosting any data for Covered Entity; instead, Covered Entity has an on-premises installation. 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 Accellion 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 7.2 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: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____