

ACCELLION KITWORKS DEVELOPER AGREEMENT



Accellion, Inc. (“Accellion”) provides the kiteworks™ enterprise mobile content platform which enables its customers to securely share, review, edit content across mobile and non-mobile platforms (collectively, “**kiteworks**”). Accellion has created development tools and a development test environment (collectively, the “**Developer Services**”) for use by software developers to develop applications and/or services, which integrate and/or interact with kiteworks (each a “**Developer Application**”). This Accellion kiteworks Developer Agreement (this “**Agreement**”) governs the terms by which you (“**Developer**”) may access and use the Developer Services. If the individual accepting this Agreement is doing so on behalf of an employer or other entity, such individual represents and warrants that such individual has full legal authority to bind such employer or other entity to this Agreement, in which case “Developer” shall mean such entity. If the individual does not have the requisite authority, the individual may not accept the Agreement or use any of the Developer Services on behalf of such employer or other entity.

1. **Registration.** Full access rights to Developer Services requires, Developer to apply to become a registered user of the Accellion Developer Portal (“**Site**”) and be approved by Accellion (a “**Registered User**”). In connection with Developer’s application to become a Registered User, Developer will be required to submit certain information, such as name and email address (collectively “**Registration Information**”). Developer warrants and covenants that: (a) all Registration Information Developer provides to Accellion is true, accurate, current, and complete; and, (b) Developer will maintain and promptly update the Registration Information to keep it true, accurate, and complete at all times.
2. **Account.**
 - a. If Accellion approves Developer as a Registered User, Accellion will notify Developer using the Registration Information provided by Developer. Developer may then establish a password-protected account to access the areas of the Site available to Registered Users (an “**Account**”).
 - b. Developer will hold its Account information, password and any materials or information received through the Developer Services (including, without limitation, the SDK and API) in confidence and will not allow any third party to access the Site using Developer’s account.
 - c. Developer is solely responsible for all activities that occur through its Account. In the event that Developer learns of any security deficiencies in, or unauthorized use of, the Developer Services or the Account Developer will immediately notify Accellion in writing by sending an email to api@kiteworks.com. Developer will provide Accellion with such cooperation, information and assistance related to its application or any such unauthorized use as Accellion may reasonably request.
3. **License; License Restrictions.**
 - a. Definitions. In addition to the Site, the Developer Services consist of the following:
 - i. “**API**” means Accellion’s application programming interface for kiteworks, including all Documentation, in the form provided by Accellion to Developer to enable Developer Applications to interface with kiteworks.

- ii. “**Documentation**” means all user guides, instructions and other documentation relating to the installation, use and administration of the API and/or SDK (as applicable), in any format.
 - iii. “**Developer Application ID**” means the confidential security key which Accellion will provide to Developer for a specific Developer Application.
 - iv. “**Hosted Environment**” means a hosted instance of kiteworks made available to Developer through the Site.
 - v. “**SDK**” means Accellion’s downloadable package of libraries, applications and Documentation provided by Accellion to Developer.
- b. Subject to the terms and conditions of this Agreement, Accellion hereby grants to Developer a non-exclusive, non-transferable, non-sublicensable, limited, revocable right to:
- i. access the Hosted Environment for the sole purpose of developing, testing and evaluating Developer Applications;
 - ii. copy and use the API, the SDK, the Documentation and items comprising the SDK for the sole purposes of developing, testing and evaluating Developer Applications either on a stand-alone basis or through the Hosted Environment;
 - iii. deploy the Developer Application ID with a single Developer Application; and
 - iv. copy, have copied, import, export and distribute (directly and through third parties) Developer Applications which comply with the requirements of this Agreement.
- c. Developer acknowledges and agrees that Accellion may impose approval requirements for Developer Applications in the future and may block or restrict Developer Applications, which do not adhere to such approval requirements. If Accellion implements such approval requirements, it shall notify Developer of the same and Developer shall submit the Developer Application for approval as directed by Accellion.
- d. Developer shall not: (i) use the API, SDK, Hosted Environment, or any Developer Application, or permit the same to be used in any manner, whether directly or indirectly, that would permit the disclosure or unauthorized access or use of the API, SDK or Hosted Environment, (ii) reproduce, modify or use the API, SDK, Developer IDs or Hosted Environment except as expressly set forth in this Agreement; (iii) distribute any Developer Application except for the distribution rights set forth in Section 3.b.4. above, (iv) sell, sublicense, rent, loan, lease or provide access to the API, Developer ID, SDK, Hosted Environment, or Documentation to any third party, (v) modify, decompile or otherwise alter the API or SDK except as expressly provided herein, (vi) introduce content that will be harmful to Accellion, including in the Hosted Environment, such as any code or virus that may damage any property or interfere with the use thereof, or (vii) use or allow the use of the SDK, API, the Hosted Environment or the Developer Application in any way that will violate any applicable law, statute, ordinance or regulation.
- e. Except for the limited rights granted in Section 3.b., Developer will not (and will not encourage or assist any third party to): (i) modify, alter, tamper with, repair or

otherwise create derivative works of any software included in or used or distributed by Accellion to provide or access the Accellion Service; (ii) reverse engineer, disassemble or decompile the Accellion Service, or attempt to discover or recreate the source code for the Accellion Service. Developer cannot use the Developer Services to create a service or application to replicate the user experience of kiteworks, or to create or operate an application or service where the primary purpose is to enable the services and/or features competitive with the kiteworks, as determined by Accellion in its sole discretion. Developer will not claim that kiteworks is a service provided by Developer. Developer will not use, or permit or encourage the use of kiteworks as a back-end data store for Developer's or a third party's application, website or service. Developer may not use any information provided by Users (as defined below) to market to any products or services that are competitive with Accellion, and Developer may not allow third parties to do so.

4. **Application Requirements and Restrictions.**

- a. Developer will ensure that each Developer Application:
 - i. Is promptly made generally available to Accellion's customers and/or Accellion for distribution to Accellion's customers and potential customers. Developer may charge customers a fee for use of the Developer Application. The end user license agreement for the Developer Application will be at least as protective of Accellion's rights as this Agreement. From time to time, Accellion may require that certain terms related to the distribution and license of the Developer Application are placed in the end user license agreement for the Developer Application.
 - ii. At all times, conforms and operates in conformity with all laws, rules and regulations, including but not limited to laws concerning privacy;
 - iii. Requires each person who directly or indirectly accesses kiteworks with or through the Developer Application (each a "User") has a separate account with Accellion (a "Accellion Account") and signs into kiteworks with such User's own, unique Accellion Account User name and password in order to store or retrieve data from the Accellion Service. Developer will not encourage any User to establish more than one Accellion Account (or assist any User in doing so);
 - iv. Copy or store any files, data or information of the User without the express consent of that User, as evidenced by an enforceable agreement between Developer and the User and with the acceptance by the User of a privacy policy which complies with applicable law;
 - v. Informs the User that the Developer Application accesses or stores data using kiteworks;
 - vi. Aggregates multiple kiteworks accounts.
 - vii. Notifies each User that the User must provide a valid e-mail address and password, which will be sent from the Developer Application to Accellion. If the Developer Application creates Instant Mode Accellion Accounts for Users (Accellion Accounts where Users provide e-mail addresses but no e-mails are sent to Users from kiteworks), the Developer Application (or its associated functionality) must give Users the option to

convert the User's current Instant Mode Accellion Account to a standard Accellion Account.

- viii. Operates in a manner that is consistent with Accellion's then current rate limits for web service APIs collectively, for all of Developer's applications, applied in a rolling 24-hour window (this only applies if Accellion is hosting the kiteworks installation accessed by the User).
- ix. Allows Users to easily cancel or terminate their registration or subscription to the Developer Application and, upon such cancellation or termination by a User, Developer must immediately disable any access to kiteworks from within the Developer Application by such User.
- x. May not be used to send or facilitate the sending of unsolicited communications or for any fraudulent purpose, including but not limited to phishing.
- xi. May not be used to mine or analyze any content transmitted to, retrieved from or stored in kiteworks
- xii. May not install any software, code or scripts without the User's express consent; and
- xiii. May not include any functionality designed to circumvent any restrictions or limitations that Accellion places on Users, including but not limited to file upload size or storage space.

If Developer is unclear whether a proposed application meets the foregoing requirements, Developer should email Accellion at api@kiteworks.com with any questions prior to beginning development of such application.

- b. Developer will ensure that the Developer Application does not promote, constitute or contain, and Developer will not knowingly transmit, any content that (i) would violate any laws, rules or regulations, (ii) would violate or infringe the rights of any third party; (iii) may be deemed libelous or defamatory; (iv) includes any nudity or sexually explicit material, (v) includes content related to gambling, alcoholic beverages, tobacco products, ammunition and/or firearms, (vi) consists of, or enables, spyware, adware, viruses, malware or any other type of malicious software, or (vii) is otherwise fraudulent, malicious or harmful to any person or entity, or discriminatory based on race, color, sex, religion, nationality, ethnic or national origin, marital status, disability, sexual orientation or age:
5. **Trademarks.** Unless otherwise labeled, all trademarks, trade names, service marks, logos, banners, and page headers displayed through the Developer Services (collectively, the "**Trademarks**") are the property of Accellion and its affiliates. Developer may not display, link to, or otherwise use the Trademarks except in accordance with the Accellion Brand Guidelines found at <http://www.accellion.com/about-us/press/brand-assets> as updated by Accellion from time to time. All goodwill arising out of Developer's use of the Trademarks will inure to the benefit of and belong to Accellion.
 6. **Ownership.** Accellion and its suppliers retain all rights, title and interest in and to the Developer Services and all intellectual property rights embodied therein and any data, content, or executables created or derived therefrom ("Accellion Property"). Developer retain all rights, title and interest in and to all intellectual property rights embodied in or

associated with Developer's application created using the Developer Services, excluding Accellion Property. Developer shall not take any action inconsistent with Accellion's ownership of Accellion Property or a kiteworks subscriber's ownership interest in his/her data.

7. **Additional Terms and Modifications.** Accellion has the right to impose additional terms and conditions that govern the Services or add to or change this Agreement, simply by posting such addition or change on the Developer Web Site or otherwise providing notice through the Developer Services. If Developer disagrees with any additions or modifications to this Agreement, Developer's sole recourse is to stop using the Developer Services. Developer's continued use of the Developer Services following the posting or providing of any such additions or modifications constitutes Developer's acceptance of the additions and/or changes.
8. **Accellion Independent Development.** Nothing in this Agreement will impair Accellion's right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with, any application or other products, software or technologies that Developer may develop, produce, market, or distribute, including but not limited to Developer Applications. In the absence of a separate written agreement to the contrary, Accellion will be free to use any information, suggestions, or recommendations Developer provides to Accellion pursuant to this Agreement for any purpose and without liability or obligation to Developer.
9. **Term, Termination and Suspension.** This Agreement becomes effective on the date Developer becomes a Registered User and will continue in force until terminated as provided herein. Accellion may terminate this Agreement immediately without cause and without notice at any time. Sections 3.d., 3.e., 5 and 7 through 13 will survive expiration or termination of this Agreement. Accellion reserves the right at any time, and for any reason or no reason, to remove or disable access to any service or application offered through the Developer Services and otherwise to suspend Developer's access to the Services. Upon the termination of this Agreement, Developer IDs shall be revoked and all licenses granted hereunder shall terminate. Upon any termination Developer must: (i) remove all full and partial copies of the SDK and API (including Documentation) from Developer's systems and discontinue the use of the SDK and API for all purposes.
10. **Disclaimer of Warranties.** THE DEVELOPER SERVICES AND ALL ITEMS MADE AVAILABLE THROUGH DEVELOPER SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. ACCELLION EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES. IN SUCH AN EVENT THE ABOVE EXCLUSION WILL NOT APPLY SOLELY TO THE EXTENT PROHIBITED BY LAW.
11. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ACCELLION BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, COVER

OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, GOODWILL, USE OR DATA) HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, WARRANTY, NEGLIGENCE OR OTHERWISE, EVEN IF ACCELLION HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL ACCELLION'S TOTAL AND CUMULATIVE LIABILITY FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF THIS AGREEMENT EXCEED FIVE DOLLARS (\$5.00). SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. IN SUCH AN EVENT THIS LIMITATION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

12. **Indemnification.** Developer agrees to indemnify, defend and hold harmless Accellion, its subsidiaries, and their respective officers, directors, employees, agents, successors and assigns (collectively, "Accellion Parties"), harmless from and against any and all claims, damages, losses, fines, penalties, costs (including reasonable attorneys' fees) and other expenses that arise directly or indirectly out of or from Developer Applications, Developer's use and/or implementations of the Developer Services, access to kiteworks from Developer Applications, or Developer's violation of any terms of this Agreement; provided, however, that: (a) at Accellion's election, it may assume control of the defense and settlement of any claims subject to Developer's indemnification obligation at Developer's sole cost and expense, and (b) Developer may not settle any such claims without the express written consent of the applicable Accellion Parties..
13. **Governing Law and Jurisdiction.** This Agreement will be construed and enforced in all respects in accordance with the laws of the State of California, U.S.A., without reference to its choice of law rules. The parties specifically exclude from application to the Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. Developer hereby irrevocably and unconditionally consents to the exclusive jurisdiction and venue in the state and federal courts in and for Santa Clara County, California and hereby and waives any jurisdictional, venue or inconvenient forum objections to such courts.
14. **Miscellaneous.** Developer will not, directly, indirectly, by operation of law or otherwise, assign all or any part of this Agreement or its rights hereunder or delegate performance of any of its duties hereunder without the prior written consent of Accellion, which it may withhold or provide in its sole discretion. This Agreement sets forth the entire understanding of the parties and supersedes any and all prior oral and written agreements or understandings between the parties regarding the subject matter of this Agreement. This Agreement may not be modified or amended except as set forth in this Agreement. For any action arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees. Except as expressly allowed in this Agreement, any notices or other communication under this Agreement must be in writing and delivered in person or sent by overnight courier to the address for the recipient. Either party may from time to time give the other party notice of such change in address in accordance with this Section. No waiver by Accellion of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default, nor shall any delay or omission on the part of Accellion to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any

right or remedy. Accellion and Developer are independent contractors, and nothing in this Agreement is intended to create or does create any joint venture, partnership or employer/employee relationship between Developer and any Accellion Parties. Under no circumstances shall any third party be considered a third party beneficiary of, or entitled to exercise, Developer's rights or remedies under this Agreement. Any heading, caption or section title contained in this Agreement is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect. The parties will promptly replace such void or unenforceable provision with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision. Customer support is not offered for the Developer Services. If at any time Developer has any questions about this Agreement, the Site or the Developer Services, Developer should contact Accellion at api@kiteworks.com.