

# KITEWORKS SOLUTION LICENSE AGREEMENT

## 19.3

This Kiteworks Solution License Agreement (the “Agreement”) applies to the use of any software provided directly or indirectly by Kiteworks. By either following the online acceptance process provided by Kiteworks or installing, accessing, or using all or any portion of the software, you agree to be legally bound by this Agreement. A contract is then formed between Kiteworks and either you personally, if you are using the software for yourself, or the company or other legal entity which you represent (“Customer”).

If Customer is located in the United States or Canada, “Kiteworks” means Kiteworks USA, LLC, a Delaware limited liability company with a place of business at 1510 Fashion Island Boulevard, Suite 100, San Mateo, CA, 94404; if Customer is located in Europe, the Middle East, or Africa, “Kiteworks” means Kiteworks Europe AG, a Swiss corporation with a place of business at The Circle 9, P.O. Box 8058, Zurich-Airport, Switzerland; otherwise, “Kiteworks” means Kiteworks Pte Ltd, a company organized under the laws of Singapore with a place of business at 1 Tai Seng Avenue, #06-05, Tai Seng Exchange, Singapore 536464.

### 1. **Kiteworks Software; Ordering.**

1.1 **Kiteworks Software.** Kiteworks 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 Kiteworks software apply only to the Kiteworks software licensed under an Order (defined below).

1.2 **Order Process.** Orders for Kiteworks software and services may be made through written Orders placed directly with Kiteworks or through a Kiteworks authorized reseller (“***Channel Partner***”). An order becomes part of this Agreement upon acceptance by Kiteworks 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 Kiteworks 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 the Parties. In the event of any conflict between the terms of any Order and the terms of this Agreement, the terms of this Agreement shall govern.

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

### 2. **Applicable Terms.**

2.1 Web Orders. If Customer purchases a license online (a “**Web Order**”), then the terms of this Agreement include the Web Order Terms set forth in Section 13. In the event of any conflict between Section 13 and other Sections of this Agreement, Section 13 shall apply.

2.2 Trial Versions. If Customer has ordered or downloaded a trial version of the Kiteworks Solution, then the provisions of Sections 4.2, 5, 6.3, 8.1, 8.3, 9.2, 9.3, 9.4, and 12.2 shall not apply during the trial but shall be effective upon the date Customer upgrades to a paid subscription for such Kiteworks software.

2.3 Accounts for Web Orders. This Section 2.3 applies to Orders placed online with Kiteworks. Customer represents that the account information provided upon registration (“**Account Info**”) is accurate, current, and complete, and that it will maintain Account Info current at all times. Customer is solely liable for use of and access to the account and Kiteworks shall not have any liability to Customer for unauthorized access or use of the account. Account Info is protected by Kiteworks’ Privacy Policy, as modified from time to time, located at <http://www.kiteworks.com/privacy-policy>, the most current terms of which are incorporated herein by reference. If Customer sets up an account using an email address with an email domain of a Kiteworks Solution licensee (e.g., where Customer’s employer is already a Kiteworks Solution licensee), then Customer consents to Kiteworks’ disclosure of Customer’s usage information to such party.

2.4 Inapplicability of Purchase Orders. The terms and conditions of this Agreement shall govern the relationship of the Parties regarding Kiteworks software and services utilized by Customer; Customer’s form of purchase order and similar documents shall have no force or effect.

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

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

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

“**Critical Update**” means additions, upgrades, or modifications to the Kiteworks Solution in connection with security vulnerabilities rated P0 by Kiteworks.

“**Designated User**” means an individual authorized by Customer to use the Kiteworks Solution pursuant to this Agreement and the applicable Order. Designated Users may consist of: (i) employees and independent contractors of Customer and its Affiliates, and (ii) individual representatives of vendors and/or service providers of Customer and its Affiliates.

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

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

**“End User”** means any user that interacts with Customer’s instance of the Kiteworks Solution as transferor or transferee. This encompasses both internal users, who have full access to log in for various purposes, and external users, who are limited to viewing only without incurring charges.

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

**“Kiteworks Solution”** means the object code versions of the Kiteworks software identified on an Order and includes related Server Software, Client Software, Updates, and Documentation, but does not include Open-Source Software, which is provided pursuant to Section 4.5.

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

**“Maintenance Support Services”** means the support services provided by Kiteworks as described in Section 5.

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

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

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

#### **4. License Terms.**

4.1 License Grant. Subject to the terms and conditions of this Agreement, Kiteworks hereby grants to Customer during the License Term, a non-exclusive, non-transferable and non-sublicensable license to: (a) install and use the Client Software on supported environments for up to the number of Designated Users purchased; and (b) use, access, and for Kiteworks Solutions not hosted by Kiteworks, copy the Server Software on supported environments for up to the number of copies identified on the Order for Customer’s internal business purposes. The number of Designated Users for whom Customer has purchased rights to use the Kiteworks Solution during the License Term is set forth in the applicable Order and is calculated based on the License Term. Customer may reassign a Designated User to a different individual once only within the License Term. Should customer reassign a Designated User, all data associated with the replaced Designated User must be deleted from the Kiteworks Solution or transferred to an active Designated User.

#### 4.2 Hosting.

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

(b) By Customer's Outsourced Provider. For virtual versions of the Kiteworks Solution, if Customer elects to engage its own outsourcing provider (each an "***Outsourced Provider***"), then: (i) Customer may sublicense to Outsourced Provider the right to install and operate the Kiteworks Solution in the form as provided by Kiteworks, 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 Kiteworks a single point of contact at Outsourced Provider for any maintenance and technical support matters. In order to provide warranty and Maintenance Support Services, Kiteworks requires remote access to the Kiteworks Solution and may require on-site access. Failure to provide Kiteworks with such reasonable access shall relieve Kiteworks of its warranty and Maintenance Support Services obligations with respect to such Kiteworks Solution.

4.3 License Restrictions. Customer shall not copy the Kiteworks 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 Kiteworks 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 Kiteworks 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 Kiteworks Solution by Designated Users and for all files and data transmitted, shared, or stored using the Kiteworks 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 Kiteworks with respect to future functionality or features.

4.4 Ownership. All right, title, and interest, including without limitation all intellectual property rights, in and to the Kiteworks Solution, including any and all modifications, enhancements, derivative works, Updates and Releases, are the sole and exclusive property of Kiteworks 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 Kiteworks 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 Kiteworks Solution, the Documentation, or the results of any performance or benchmark tests of the Kiteworks Solution. Customer will not allow the Software or any performance or benchmark test results to be made available to any third party unless Kiteworks approves that disclosure.

4.5 Open-Source Software. Customer agrees that any software or materials which may be made available by Kiteworks, 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 Kiteworks Solution. Open-

Source Software terms are made available either with the Kiteworks Solution or through the administration interface of the applicable Kiteworks Solution.

4.6 Advisory Contacts. Customer must provide Kiteworks with advisory contacts for all Critical Updates and regular Updates, and ensure advisory contacts are current at all times during the License Term. To the extent Customer, its Designated Users or End Users are damaged in connection with the Kiteworks Solution, and such damage would not have occurred but for Customer's failure to maintain up-to-date advisory contacts, Kiteworks shall have no liability to Customer. Customer hereby consents that all Advisory Contacts may be shared within Kiteworks and with Kiteworks Affiliates. In the event Customer designates in writing a Channel Partner or other provider as the administrator of its Kiteworks Solution, Customer hereby consents that all Advisory Contacts may be shared between Kiteworks and such Channel Partner or other provider solely in connection with Customer's license of the Kiteworks Solution.

4.7 Penetration Testing. Should Customer conduct penetration testing or other security testing of the Kiteworks Solution, it shall provide Kiteworks a copy of all test results within thirty (30) days of completion. All such results will be deemed Confidential Information and entitled to the full protections of Section 7.1, below.

5. **Maintenance Support Services**. Kiteworks provides Maintenance Support Services for the License Term at no additional charge under the terms set forth at <http://www.kiteworks.com/supportguidelines/enterprise.html>, which are incorporated herein by reference. As part of Maintenance Support Services, Kiteworks will make available to Customer all Updates to the supported Kiteworks Solution that Kiteworks makes generally available to its other customers. Customer shall provide Kiteworks access to the Kiteworks Solution to install such Updates if required by Kiteworks. *Customer agrees to deploy any critical Updates, as identified by Kiteworks, within five (5) days following receipt.* Kiteworks 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.

## 6. **Payment; True-Up Users**.

6.1 Payment. Customer shall pay the fees specified in the Order. Orders are firm commitments of Customer and are not cancelable by Customer. Unless otherwise specified on the Order form, for Orders made directly with Kiteworks, (i) Customer shall pay invoices in U.S. dollars within thirty (30) days of the invoice date and without offset or deduction, (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. Kiteworks may apply a late charge on overdue invoices at a rate of one and one-half (1.5%) per month or the maximum allowed by law, whichever is less.

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

6.3 True-Up Users. If permitted on the Order, Customer may add Designated Users during the License Term ("**True-Up Users**") by notifying Kiteworks of the number of True-Up Users promptly following the end of each calendar quarter in which Customer adds True-Up Users. Kiteworks 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 Kiteworks, with Customer's prior consent, not to be unreasonably withheld, to electronically access the Kiteworks Solution, or, with respect to Hosting Services, to monitor use, to verify Customer's compliance with this Agreement. Customer shall promptly pay to Kiteworks any underpaid fees revealed by such audit and, if the audit reveals an underpayment of 5% or more, the reasonable costs of the audit.

6.4 Automated Reporting. The Server Software periodically transmits technical data to Kiteworks. 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 Kiteworks 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 Kiteworks Solution features used and related data. Customer will not in any way attempt to configure the Kiteworks Solution or create systems that prevent the transmission or delivery of such usage data. Kiteworks uses such data only for Kiteworks' own internal business purposes and such data shall be considered Kiteworks' Confidential Information. Kiteworks 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.

## 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 Kiteworks Solution shall be the Confidential Information of Kiteworks. 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 the 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. Kiteworks may share Customer Confidential Information with its 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 immediate injunctive relief without any requirement to post bond, in addition to any other available remedies.

7.2 Customer Protected Data. Customer acknowledges that Kiteworks does not need or require access to any files or attachments stored or transmitted with the Kiteworks 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 Kiteworks to receive and access any Protected Data, Customer shall first obtain the written approval of an executive officer of Kiteworks, which may be withheld by Kiteworks 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 subject to the General Data Protection Regulation (EU) 2016/679 ("**GDPR**") or similar body of laws, Customer agrees to Kiteworks' Data Processor Addendum available at <https://www.kiteworks.com/legal/kiteworks-dpa> and which is incorporated herein by reference.

7.3 Notice and Consent Regarding Transfer of Data. Use of the Kiteworks Solution requires that when a Customer's End Users contact Kiteworks 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 Kiteworks USA, LLC, in Europe by Kiteworks UK Ltd, Kiteworks Europe AG, Kiteworks BLG Ltd, and Accellion GmbH, and in Singapore by Kiteworks 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, Kiteworks USA, LLC in the United States of America, Kiteworks UK Ltd and Accellion GmbH in Europe, and Kiteworks Pte Ltd in Singapore for that purpose. Kiteworks UK Ltd, Accellion GmbH, Kiteworks Europe AG, Kiteworks BLG Ltd and Kiteworks Pte Ltd are subsidiaries of Kiteworks USA, LLC, 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 Kiteworks implements measures to encrypt Confidential Information and Protected Data both in transit and at rest, Kiteworks 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 Kiteworks Solution Performance Warranty.**

(a) Warranty. Kiteworks warrants to Customer that for a period of thirty (30) days after the date of delivery: (i) the media on which the Kiteworks Solution is furnished under normal use will be free from material defects in materials and workmanship; and (ii) the Kiteworks 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 Kiteworks within the applicable warranty period. Kiteworks' entire liability and Customer's exclusive remedy under the warranty in subsection (a) above shall be replacement or repair of the defective media or Kiteworks Solution that does not meet Kiteworks' limited warranty, and if Kiteworks is unable to repair or replace defective components of the Kiteworks Solution within a reasonable period of time (not to exceed thirty (30) days from Kiteworks' receipt of Customer's notice), this Agreement shall terminate, in which case: (i) Kiteworks shall refund all license fees received by Kiteworks for the Kiteworks Solution for the applicable License Term; and (ii) Customer shall uninstall and destroy the nonconforming Kiteworks Solution and certify in writing that it has done the same. Kiteworks is not liable under any warranty or otherwise for defects or liability caused by the use of the Kiteworks Solution in any manner or for any purpose other than that for which it was licensed to Customer, or for causes not within Kiteworks' 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 Kiteworks.

8.2 Virus Protection. Kiteworks warrants to Customer that, to the best of Kiteworks' knowledge as of the date of delivery, the Kiteworks 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. Customer agrees to implement antivirus software licensed by Kiteworks at all times during its use of the Kiteworks Solution.

8.3 Limited Services Warranty. Kiteworks 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 Kiteworks' sole and exclusive liability for breach of the foregoing warranty, Kiteworks will, at its sole option and expense, and provided that Kiteworks is notified of any such breach during the warranty period, re-perform the services, or if Kiteworks is unable to perform the services as warranted, refund the fees paid to Kiteworks 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. KITEWORKS DOES NOT WARRANT THAT THE USE OF THE KITEWORKS SOLUTION WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL NONMATERIAL DEFICIENCIES OR ERRORS ARE CAPABLE OF BEING CORRECTED. KITEWORKS 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 KITEWORKS 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 Kiteworks, its Affiliates and their respective officers, directors, employees, agents, successors and assigns (“**Kiteworks 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 Kiteworks Indemnitees may incur, based upon or arising out of (i) any use of the Kiteworks Solution by Customer in breach of this Agreement, and (ii) the data, files, and content transmitted, shared, or stored using the Kiteworks Solution.

9.2 Kiteworks Indemnity. Kiteworks will defend any action brought against Customer to the extent that it is based upon a third party claim that the Kiteworks Solution infringes such third-party’s U.S. patent or foreign equivalent existing as of the Effective Date of the applicable Order or any copyright, or misappropriates any trade secret (each a “**Claim**”), and will pay any costs (including reasonable attorneys’ fees) and damages finally awarded or paid in settlement of the Claim, provided that Customer will give Kiteworks: (i) prompt written notice of such Claim, (ii) all cooperation and assistance reasonably requested by Kiteworks in the defense of the Claim, at Kiteworks’ expense, and (iii) sole control over the defense and settlement of the Claim, provided that (a) Customer may participate in the defense of the Claim at its sole expense, and (b) Kiteworks may not, without the prior written consent of Customer, enter into a settlement which admits liability of Customer or imposes a monetary obligation on Customer.

9.3 Exclusions. Kiteworks will have no liability for a Claim to the extent it results from: (a) modification of the Kiteworks Solution made by a party other than Kiteworks, if the Claim would not have arisen but for the modification; (b) the combination, operation or use of the Kiteworks 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 Kiteworks if use of such updated or modified software or hardware would have resolved the Claim; or (d) compliance by Kiteworks 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 Kiteworks Solution is held or is likely to be held as infringing, then Kiteworks may (i) replace the Kiteworks Solution, without additional charge, with a non-infringing product that is at least functionally equivalent; (ii) modify the Kiteworks Solution to avoid the infringement; (iii) obtain a license for Customer to continue use of the Kiteworks Solution; or (iv) if none of the foregoing are commercially reasonable, terminate the license for the infringing Kiteworks Solution and refund a pro rata portion of all fees received by Kiteworks for the Kiteworks Solution as measured over the License Term. Upon such termination, Customer shall uninstall and destroy the nonconforming Kiteworks Solution and certify in writing that it has done the same. KITEWORKS’ AGGREGATE INDEMNIFICATION LIABILITY FOR CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION SHALL NOT EXCEED THE FEES PAID BY CUSTOMER FOR THE APPLICABLE KITEWORKS SOLUTION. THIS SECTION 9 SHALL CONSTITUTE KITEWORKS’ 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 KITEWORKS' 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. KITEWORKS' AGGREGATE LIABILITY FOR DAMAGES SHALL IN NO EVENT EXCEED THE TOTAL FEES RECEIVED FROM THE LICENSES GRANTED TO CUSTOMER UNDER THIS AGREEMENT IN THE PREVIOUS TWELVE MONTHS FOR THE APPLICABLE KITEWORKS 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 KITEWORKS AND CUSTOMER.

**11. Term and Termination.**

11.1 Term. This Agreement commences on the Effective Date and shall continue for the License Term set forth on the applicable Order. The License Term shall be automatically renewed for a period of the same duration unless a Party provides written notice of termination and/or down-sell at least thirty (30) days prior to the end of the then-current License Term. To be effective, such notice of termination by Customer must be emailed to [renew@kiteworks.com](mailto:renew@kiteworks.com) and [legal@kiteworks.com](mailto:legal@kiteworks.com). If your Order is with Kiteworks Europe, such notice of termination must be emailed to [legal@kiteworks.com](mailto:legal@kiteworks.com) and [renew.europe@kiteworks.com](mailto:renew.europe@kiteworks.com).

11.2 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 the 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.

11.3 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 Kiteworks or, at Kiteworks' request, destroy, the applicable Kiteworks Solution and provide Kiteworks 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 4.3, 4.4, 4.5, 4.6, 4.7 6, 7, 8, 9, 10, 11.3 and 12.

**12. Miscellaneous.**

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

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

12.3 Modification, Waiver, and Remedies. Except as provided for in Section 12.11, below, no modification, alteration, amendment or addition shall be effective unless made in writing, dated and signed by a duly authorized representative of each Party. No waiver of any breach hereof shall be held to be a waiver of any other or subsequent breach. Each Party's rights and remedies are in addition to any other rights and remedies provided by law or in equity. No choice of any remedy shall constitute an election of remedies.

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

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

12.6 Export. Customer acknowledges that the Kiteworks 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 Kiteworks 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.

12.7 Government Licensing. If the Kiteworks Solution is accessed or used by any agency or other part of the U.S. Government, the U.S. Government acknowledges that (i) the Kiteworks 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; and (ii) the Kiteworks 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.

12.8 Governing Law. If the contracting Kiteworks entity is Kiteworks USA, LLC, this Agreement shall be governed by the laws of the United States and the State of California, without reference to conflict of laws principles; any dispute between the Parties regarding this Agreement will be subject to the exclusive venue of the state and federal courts in the state of California in San Francisco, San Mateo, or Santa Clara counties; each Party hereby consents to the exclusive jurisdiction and venue of such courts. If the contracting Kiteworks entity is Kiteworks Pte Ltd, this Agreement shall be governed by the laws of England and Wales, without reference to conflict of laws principles; any dispute between the Parties regarding this Agreement will be subject to the exclusive venue of the courts in London, England; each Party hereby consents to the exclusive jurisdiction and venue of such courts. If the contracting party is Kiteworks Europe AG, this Agreement shall be governed by the laws of Switzerland, without reference to conflict of laws principles; any dispute between the Parties regarding this Agreement will be subject to the exclusive venue of the courts in Zurich, Switzerland; each Party hereby consents 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 claim arises. **Before instituting any litigation, the Parties agree to engage in at least one good faith settlement discussion, in person or by videoconference, where a person with full settlement authority from each Party participates in good faith. Should litigation ensue, the prevailing party shall be entitled to recover its attorneys’ fees and costs actually incurred in litigating the dispute.**

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

12.10 Entire Agreement; Construction. This Agreement constitutes the complete and exclusive agreement between the Parties and supersedes any and all prior communications, representations and understandings, whether written or oral. There are no third-party beneficiaries of Customer. Section headings are for convenience only and shall not affect interpretation of the relevant section. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding on the Parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

12.11 Amendment of this Agreement. Kiteworks may modify or amend this Agreement at any time by posting a revised version on its website <https://www.kiteworks.com/legal/ksla/> which

Customer agrees constitutes sufficient notice to Customer of such modification or amendment. Such amendments and modifications shall be effective upon renewal of Customer's License Term.

**13. Web Order Terms.** The terms of this Section 13 apply to Web Orders only. REGARDLESS OF WHERE CUSTOMER IS LOCATED, "KITEWORKS" MEANS KITEWORKSUSA, LLC, A DELAWARE CORPORATION WITH A PLACE OF BUSINESS AT 1510 FASHION ISLAND BOULEVARD, SUITE 100, SAN MATEO, CA 94404, USA.

13.1 License Term; Renewals. Customer's initial License Term shall be from the date of purchase through the term of the type of account purchased by Customer (monthly or annual) and shall automatically renew for additional terms of the same duration unless Customer cancels by sending an email to [cancel@kiteworks.com](mailto:cancel@kiteworks.com) which includes Customer's customer I.D. and the email address of the originator of Customer's account. IF CUSTOMER DOES NOT CANCEL CUSTOMER'S SUBSCRIPTION THIRTY DAYS (30) PRIOR TO THE EXPIRATION OF THE THEN-CURRENT LICENSE TERM, CUSTOMER WILL BE CHARGED FOR, AGREES TO PAY SUBSCRIPTION FEES, AND AUTHORIZES KITEWORKS TO CHARGE CUSTOMER'S CREDIT CARD ON FILE FOR A SUBSEQUENT LICENSE TERM.

13.2 Storage and Bandwidth Fees. For the hosted version of the Kiteworks Solution, Customer's use is subject to storage and bandwidth limitations, and Customer will be charged \$1.00 per gigabyte (or the then-current per-gigabyte charge) that exceeds the storage limit or bandwidth limit for Customer's subscription ("**Excessive Use Charges**"). Customer may review Customer's storage and bandwidth usage through the Admin Console. To purchase additional bandwidth and/or storage, contact [sales@kiteworks.com](mailto:sales@kiteworks.com). Fees for Customer's subscription, together with Excessive Use Charges, are referred to as "Subscription Fees." CUSTOMER CONSENTS TO ALLOW KITEWORKS TO CHARGE CUSTOMER'S CREDIT CARD, EITHER DIRECTLY OR THROUGH ITS PAYMENT PROCESSORS, FOR EXCESSIVE USE CHARGES.

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

13.4 Restrictions. Customer acknowledges and agrees that Customer, Designated Users, and other users with access to shared folders: (i) will not use the Kiteworks Solution to transmit any communications or messages that constitute spam, are obscene, abusive, harassing, threatening, racist, malicious, illegal, fraudulent, defamatory, libelous, harmful to minors, or that violate or infringe the rights of third parties; and (ii) will comply with policies applicable to the hosted version of the Kiteworks Solution as made available to Customer by Kiteworks from time to time.

13.5 Representations and Warranties. Customer represents and warrants to Kiteworks that: (i) Customer and Designated Users are not subject to export control restrictions established by laws and regulations of the United States of America, and Customer shall comply with all export and import laws, rules, regulations and restrictions of the jurisdictions in which Customer resides; (ii) Customer, Designated Users, and other users with access to shared folders have all necessary rights to any data stored on or sent with the Kiteworks Solution ("**Customer Data**") and that use of

Customer Data as contemplated herein does not violate any third party rights; and (iii) Customer hereby grant Kiteworks and its contractors the right to use, copy, cache and transmit Customer's Data in conjunction with Customer's use of the Kiteworks Solution.

### 13.6 Termination.

(a) Termination by Customer. Customer may terminate this Agreement at any time by contacting [legal@kiteworks.com](mailto:legal@kiteworks.com) and [renew@kiteworks.com](mailto:renew@kiteworks.com) and providing Customer's relevant Account Info and the email address of the originator of Customer's account.

(b) Termination by Kiteworks. Kiteworks may terminate this Agreement without notice if: (i) Customer is in default and/or if Customer fails to pay applicable fees, (ii) if Customer otherwise violates the express terms of this Agreement, or (iii) in the event Kiteworks is prevented from providing any portion or all of the hosted version of the Kiteworks Solution by the actions of a third party.

(c) Effect of Termination. In the event Kiteworks terminates this Agreement pursuant to Section 13.6(b)(iii) above, Kiteworks shall remit to customer a pro rata amount of any prepayment. In the event this Agreement is terminated for any other reason, Customer will not be entitled a refund of any prepaid amounts and will remain liable to pay for Excessive Use Charges. Upon termination, the licenses granted to Customer by Kiteworks shall cease, Customer's account will be terminated following billing and payment of any past due amounts, and Customer will no longer be able to use the Kiteworks Solution. In addition to the terms identified in Section 11.3, Sections 13.5, 13.6(c), and 13.7 shall survive expiration or termination of this Agreement.

13.7 Inapplicability of Certain Terms. The support provisions of Section 5 and the indemnification provisions in Sections 9.2, 9.3 and 9.4 shall not apply to Web Orders, although Customer will be entitled to receive Updates.

13.8 Assignment. Neither this Agreement nor any rights or obligations of Customer hereunder may be assigned by Customer in whole or in part without the prior written approval of Kiteworks. Any assignment in violation of the foregoing shall be null and void.

13.9 Miscellaneous. As a party to this Agreement, Customer, if a resident of California, is entitled to the following specific consumer information under California Civil Code Section 1789.3: The Complaint assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 400 R Street, Sacramento, California 95814, or by telephone at (800) 952-5210. Florida residents may contact the Florida Department of Financial Services in writing at 200 East Gaines Street, Tallahassee, Florida, 32399, or by telephone at 1-800-342-2762.