


## Master Services Agreement

This Master Services Agreement (the “**Agreement**”) is entered into by and between the parties listed below as of the Effective Date, and signed by a representative of each entity, who attests to having the necessary power and authority to bind the respective party:

“Caselle”	“Customer”
Entity Name: Caselle LLC	Entity Name:
Address: 1656 S. East Bay Blvd Suite 100 Provo, UT 84606	Address:
Contact:	Contact:
Phone Number:	Phone Number:
Email Address:	Email Address:
Signature: 	Signature:
Name: Chad Jarvi	Name:
Title: President	Title:
“Effective Date”: _____, 20__	

In consideration for the commitments set forth below, the adequacy of which consideration the parties hereby acknowledge, the parties agree as follows.

1. **DEFINITIONS.** The following capitalized terms will have the following meanings whenever used in this Agreement.
  - 1.1. “**Customer Data**” means all electronic data and information processed or stored through the Hosted Services by Customer or on Customer’s behalf, but shall not include payment records, credit cards or other information Customer uses to pay Caselle, or other information and records related to Customer’s account, including without limitation identifying information related to Customer staff involved in payment or other management of such account.
  - 1.2. “**Data Protection Laws**” means all state, foreign, or federal laws, statutes, regulations, rules, executive orders, directives, or other official guidance, and any industry rules or self-regulatory

codes of conduct relating to data protection, privacy, data security, electronic communications, or data security incidents that are applicable to Customer or Customer Data.

- 1.3. **“Documentation”** means any user manuals and other documentation that Caselle makes available to assist in the integration or use of the Hosted Services or On-Premise Software.
- 1.4. **“Hosted Services”** means Caselle’s cloud-based services, applications and modules listed in an Order and hosted by or on behalf of Caselle for Customer, excluding all third party software.
- 1.5. **“On-Premise Software”** means Caselle’s software products listed in an Order to be delivered as licensed software and deployed on Customer’s premises in accordance with the terms of this Agreement and the Order.
- 1.6. **“Order”** means a quote, statement of work, invoice, or an order, furnished by Caselle to Customer, for access to the Hosted Services, for limited license to the On-Premise Software, or for other Services to be provided by Caselle to Customer. The Order is incorporated into and made a part of this Agreement.
- 1.7. **“Personal Data”** means any data that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular data subject, including without limitation, all information defined as “Personal Data,” “Personal Information” or analogous definitions in applicable Data Protection Laws.
- 1.8. **“Services”** means the Hosted Services and/or On-Premise Software (as applicable) and the installation, initial training, configuration, customization, data conversion, and other services described on an Order, excluding Support.
- 1.9. **“Support”** means the support services for the Hosted Services or On-Premise Software as set forth in Section 2.4 of this Agreement.
- 1.10. **“User”** means any person who uses the Hosted Services on Customer’s behalf or through Customer’s accounts or passwords, whether authorized or not, including without limitation Customer’s employees, representatives, consultants, contractors and agents.

## 2. SERVICES

- 2.1. Subscription and License Types. Caselle makes services available both in the form of a subscription to Hosted Services and a limited license to On-Premise Software. Certain terms and conditions of this Agreement apply only to the Hosted Services or to the On-Premise Software. Customer acknowledges and agrees that the delivery method of the Services (subscription to Hosted Services or limited license to On-Premise Software) indicated in an Order will determine the applicability of those terms and conditions under this Agreement. Notwithstanding the foregoing, Caselle generally permits (upon request and with Caselle prior approval) the transition during the term of an Order from On-Premise Software delivery to Hosted Services delivery. If Customer so requests and Caselle approves, Customer acknowledges and agrees that (a) Customer’s acceptance of the Hosted Services constitutes Customer’s agreement to the applicable terms of this Agreement governing Hosted Services, (b) Customer may incur an additional fee for transition as agreed upon by the parties in writing, and (c) Caselle will not be liable to Customer for any losses (including loss of data or profits) that Customer may incur as a result of such transition.

- 2.2. Authorization. Subject to the terms and conditions of this Agreement (including without limitation Customer's timely payment of all fees and compliance with all other obligations and restrictions set forth in this Agreement) and to the extent applicable in accordance with Customer's Order, Caselle:
- (a) grants to Customer permission to access and use the functionality of the Hosted Services, for the limited purposes described in the Documentation, throughout Customer's applicable service period; and/or
  - (b) grants Customer a license, during Customer's applicable license period, to reproduce and use the On-Premise Software, solely in the form furnished by Caselle to Customer, on Customer's own server(s) for the limited purposes described in the Documentation.
- 2.3. Delivery of Services. Upon payment by Customer of the applicable fees, Caselle will provide the Services as set forth in the applicable Order. If applicable based on Customer's Orders, Caselle will make the On-Premise Software available for electronic download.
- 2.4. Support. Caselle will use reasonable efforts during the term of this Agreement to make the Hosted Services available for Customer's authorized use twenty-four (24) hours per day, 365 days per year, subject to any planned or unplanned downtime. Caselle will use reasonable efforts to limit planned downtime to 11:00 pm Saturday to 1:00 am Sunday (Eastern Standard Time). Caselle will use reasonable efforts to communicate unplanned downtime via email or through the Hosted Services. Caselle's support primarily consists of responses to system operational configuration questions, troubleshooting assistance, and responses to occasional how-to questions concerning the Services. Support will not include, and Caselle will have no responsibility with regard to, any issues related to or arising from (a) Customer's or a third party's hardware, infrastructure or network, (b) any changes made other than by Caselle or its representatives, (c) format changes to any file used to import from, or export data to, a third party, or (d) training of personnel. Extended Support fees may apply and be assessed to Customer for any issues not covered by standard Support. Caselle will have representatives available for phone, email and internet support from 7:30 am to 5:30 pm (Mountain Standard Time) Monday through Friday (except designated federal and/or business holidays). To the extent applicable, Caselle will take reasonable measures to backup Customer Data each business day Monday through Friday (except designated holidays).
- 2.5. Documentation. Customer may reproduce and use the Documentation solely as necessary to support Users' use of the Hosted Services or On-Premise Software, as the case may be.
- 2.6. Hosted Services Revisions. Caselle may revise Hosted Services features and functions at any time, including without limitation by removing such features and functions or reducing service levels.
- 2.7. Ownership. The permissions and the license granted to Customer above are non-exclusive, non-transferable (unless assignment is approved by Caselle in accordance with Section 10.6), non-sublicensable, revocable, and subject to any applicable restrictions or limitations set forth in an Order and this Agreement. All rights not expressly granted to Customer are reserved by Caselle and its licensors. Without limiting the foregoing, all ownership and other proprietary interests in and to the Documentation and the Hosted Services, On-Premise Software and all fixes,

upgrades and updates thereto, and other Services, and all patents, copyrights, trade secrets, trademarks and other intellectual property rights embodied in or associated with the same, are and shall remain with Caselle and/or its licensors, as applicable. Neither this Agreement nor access to the Hosted Services or limited license to the On-Premise Software will be construed as transferring title or any ownership right or interest in the same to Customer. Upon termination of this agreement, Customer's limited license terminates, and Customer must, if applicable, return all copies and modifications of the On-Premise Software to Caselle within 30 days of receipt of written notification of such termination from either party.

- 2.8. **Feedback.** If Customer provides any feedback, enhancement requests, recommendations, comments, or suggestions (collectively, "**Feedback**") about Caselle or the Services, Customer agrees that Caselle may freely use such Feedback in its discretion without any obligation, attribution, or compensation to Customer, and Customer waives all rights in the Feedback.

### 3. CUSTOMER RESPONSIBILITIES AND RESTRICTIONS

- 3.1. **Acceptable Use.** The Services are for commercial use only. Customer shall comply with the Documentation. Customer shall not, nor will Customer allow anyone else to, directly or indirectly: (a) use the Services for any purpose other than Customer's own internal business purposes including, without limitation use for service bureau or time-sharing purposes or in any other way sublicense or allow third parties to use or exploit the Services, (b) permit any third party, other than Users with appropriate access authority, to access or use the Services without Caselle's consent, including without limitation providing Services passwords or other log-in information to any third party, (c) share all or any portion of the non-public Services features or content with any third party, (d) access the Services in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Services, or to copy any ideas, features, functions or graphics of the Services, (e) engage in web scraping or data scraping on or related to the Services, including without limitation collection of information through any software that simulates human activity or any bot or web crawler, (f) knowingly upload or permit to be introduced to the Services any data or other information that contains any worms, vulnerabilities, viruses, Trojan horse, or any other code, routine, program or mechanism of a destructive or malicious nature that permits unauthorized access into, disables, partially or wholly erases, or otherwise adversely affects the Services or the systems on which the Services are hosted, (g) reverse engineer, disassemble, decompile, decode, or adapt the Services, or any part thereof, or otherwise attempt to derive or gain access to the source code of the Services, (h) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works of or improvements to the Services or part thereof, (i) interfere with or disrupt servers or networks connected to the Services, or bypass or breach any security device, license key or protection used for or contained in the Services, (j) use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any of Caselle's or any other party's intellectual property rights or that violates any applicable law, (k) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services or Caselle systems, including, without limitation, to conduct penetration or similar testing, or (l) remove any disclaimer, copyright, trademark, proprietary rights, or other notice on or in the Services.

- 3.2. Customer Obligations. Customer assumes full responsibility for the use and results obtained from the use of the Services. Customer acknowledges that various third-party hardware, software and services are required to use the Services or certain features thereof, and Customer will be solely responsible for obtaining the same, at its expense and in accordance with all applicable specifications in the Documentation and Order, as needed. If Customer is using On-Premise Software and Caselle provides a fix, upgrade or update, Customer agrees to immediately install and/or use such fix, upgrade or update and discontinue use of the previous version of the On-Premise Software. For Hosted Services, any upgrades and other modifications we may create to improve the performance of the Services may be automatically installed without providing any additional notice or receiving consent from Customer.
- 3.3. Users. Customer is responsible and liable for: (a) Users' use of the Services, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of this Agreement applicable to Customer; and (b) any use of the Services through Customer's account, whether authorized or unauthorized. Customer shall take reasonable steps to prevent unauthorized access to the Services, including without limitation by protecting its passwords and other log-in information. Customer shall notify Caselle immediately of any known or suspected unauthorized use of the Services or breach of its security and shall use best efforts to stop said breach.
- 3.4. Compliance with Laws. In its use of the Services, Customer shall comply with all applicable laws and regulations.

#### 4. CUSTOMER DATA

- 4.1. Use of Customer Data. Customer grants Caselle a worldwide, non-exclusive, royalty free, transferable, sub-licensable, perpetual, irrevocable right and license to access and use Customer Data (a) to provide the Hosted Services to Customer, (b) to share it with our affiliates and service providers for the purpose of providing the Hosted Services, (c) to contact Customer for marketing purposes, or (d) as required by applicable law or by proper legal, governmental or regulatory authority. Customer retains all right, title, and interest in and to Customer Data, subject to the rights granted to us in the Agreement. Customer is solely responsible for the accuracy, quality, integrity, reliability, appropriateness, legality and right to use Customer Data submitted to Caselle through the Services as well as the consequences, ramifications, and results of sharing Customer Data with Caselle. Caselle is not under any obligation to review Customer Data and shall not be liable or responsible for the content, accuracy, or appropriateness of, or the right to use Customer Data to perform the Services. Caselle may retain third parties to assist it in performing its obligations under this Agreement or any Order provided that such third parties shall share Caselle's legal obligations with respect to Customer Data as set forth herein. Such third parties shall be referred to as Subprocessors herein. If required by Data Protection Laws, Caselle will notify Customer before engaging any Subprocessor to process Customer Data. Caselle shall not sell Customer Data or share it with any third party for cross-contextual behavioral advertising. Caselle shall not, except as otherwise required or permitted herein, in an Order, or in other written direction from Customer, disclose Customer Data to any third party. To the extent Customer or Users provide Personal Data in connection with the use of the Services, Customer is responsible for and

warrants that Customer will obtain the necessary rights and consents under applicable law to disclose to Caselle, and allow Caselle to collect, use, retain, and disclose information that Customer provides to Caselle which Caselle is enabled to collect, including information using cookies or other similar means. Caselle also shall not combine Personal Data within the Customer Data with any data received from or on behalf of any third party. In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy will be for Caselle to use reasonable commercial efforts to restore the lost or damaged content or data from the latest back-up of such content or data maintained by Caselle. Caselle will not be responsible for any loss, corruption, destruction, alteration or disclosure of Customer Data caused by Caselle or any third party.

- 4.2. Security. Caselle shall exercise commercially reasonable efforts to prevent unauthorized disclosure or exposure of Customer Data. Further, Caselle shall arrange for backup of Customer Data each business day to the extent applicable.
- 4.3. De-Identified Data. Caselle shall own all rights in and may collect, use, transfer, or share De-Identified Data (as defined below) in any way, in its sole discretion, including without limitation aggregated with data from other customers. "**De-Identified Data**" refers to Customer Data that has been processed so that it does not (a) contain Personal Data or (b) permit the identification of Customer.
- 4.4. Return or Destruction. Upon the termination or expiration of this Agreement, Caselle will return or securely destroy, at Customer's option, all Customer Data in Caselle's possession in a format of Caselle's choosing. If Customer elects the return of Customer Data, Caselle will securely destroy all Customer Data after such return. If Customer does not elect for the return of Customer Data within sixty (60) days of the termination or expiration of this Agreement, Caselle will securely destroy the Customer Data. Further, upon Customer request and for an additional fee, Caselle may assist Customer with installation and/or configuration of Customer Data on a local network. The obligations above do not apply to De-Identified Data.
- 4.5. Required Disclosure. Notwithstanding anything to the contrary in this Agreement, Caselle may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Caselle shall give Customer prompt notice of any such legal or governmental demand unless prohibited from doing so, and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.
- 4.6. Risk of Exposure. CUSTOMER RECOGNIZES AND AGREES THAT HOSTING DATA ONLINE INVOLVES RISKS OF UNAUTHORIZED DISCLOSURE OR EXPOSURE AND THAT, IN ACCESSING AND USING THE SERVICES, CUSTOMER ASSUMES ALL SUCH RISKS. CASELLE OFFERS NO REPRESENTATION, WARRANTY, OR GUARANTEE THAT CUSTOMER DATA WILL NOT BE EXPOSED OR DISCLOSED THROUGH ERRORS OR THE ACTIONS OF THIRD PARTIES.
- 4.7. Data Accuracy. Caselle will have no responsibility or liability for the accuracy of Customer Data.
- 4.8. Regulatory Compliance. Caselle shall reasonably cooperate with Customer, at Customer's expense and on reasonable notice, to allow the Customer to take reasonable and appropriate steps to ensure that Caselle's processing of Customer Data is consistent with Data Protection Laws. If Customer determines that Caselle's processing of Customer Data is inconsistent with

Data Protection Laws or exceeds the authorization that Customer has authorized under this Agreement or in an Order, Caselle shall reasonably cooperate with Customer, at Customer's expense, to stop and remediate such processing.

- 4.9. Security Incidents. In the event either Customer or Caselle becomes aware of the unauthorized destruction, loss, alteration, disclosure, acquisition or use of, or access to Customer Data (a "**Security Incident**"), the party shall notify the other without undue delay, and, in any event, within five (5) days. The parties shall reasonably cooperate to determine the scope and cause of the Security Incident and to remediate the cause and effects of the Security Incident. Such cooperation shall include a continuing duty to share all information reasonably available to the party regarding the scope, nature and effects of the Security Incident. If Data Protection Laws require notice of a Security Incident to be given to government authorities or individuals, Customer shall promptly undertake such notifications at Customer's expense. Likewise, if Data Protection Laws require remedial action (which may include, without limitation: notice to credit reporting agencies, media, or other entities; support for affected individuals; and credit monitoring services), Customer shall promptly provide such remedial action at Customer's expense. Caselle will not inform any third party (except as legally or contractually required) of the Security Incident without Company's prior written consent.
- 4.10. Requests from Regulators and Individuals. If Caselle receives any inquiry or request from a government body or individual regarding the processing of Personal Data within the Customer Data, Caselle shall, unless prohibited by law, promptly forward such inquiry or request to Customer. Where such request is forwarded to Customer, Customer shall have the sole responsibility to respond to such inquiry or request. Caselle shall reasonably cooperate, at Customer's expense, with Customer as needed to respond to such inquiry or request.

## 5. PAYMENT OF FEES

- 5.1. Fees. Customer agrees to pay Caselle the fees set forth in Orders. Fees will be invoiced and paid in U.S. dollars. Unless otherwise specified in an Order, each invoice is due and payable at the invoice due date. Further, unless otherwise set forth in an Order, Caselle may increase the fees for any renewal period. Upon Customer request, Caselle will provide notice of any fee increases prior to renewal. No Support will be rendered to the Customer if any fees are overdue.
- 5.2. Interest, Taxes and Withholdings. Overdue payments will result in a 10% late payment fee. The fees set forth in this Agreement are exclusive of, and Customer will pay, all taxes, duties and other charges or fees imposed by governmental authorities arising out of this Agreement or the use of the Services by Customer. In the event that Caselle is required to pay any tax or duty (other than taxes based on Caselle's net income), Customer will reimburse Caselle for any and all such payments.

## 6. TERM AND TERMINATION

- 6.1. Term. The term of this Agreement will commence on the Effective Date and continue until this Agreement has terminated or all Orders have been terminated, whichever occurs first. Except as otherwise set forth in an Order, the initial term of each Order will be for the period of time from when the Order becomes effective until the date that is one (1) year from the date when Caselle begins providing Services. Each Order will automatically renew after its initial term for

successive one (1) year periods, unless either party refuses such renewal by written notice thirty (30) or more days before the renewal date.

- 6.2. Termination for Cause. Either party may terminate this Agreement, including all active Orders, for the other's material breach by written notice specifying in detail the nature of the breach, effective in thirty (30) days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure. Without limiting Caselle's other rights and remedies, Caselle may suspend or terminate Customer's or any User's access to the Services at any time, without advance notice, if Caselle reasonably believes that Customer or such User has conducted itself in a way that is not consistent with the Documentation or the other requirements of this Agreement, in a way that puts the Services at risk, or in a way that subjects Caselle to potential liability.
- 6.3. Effect of Termination. Upon termination or expiration of this Agreement for any reason, all permissions and other authorizations granted by Caselle to Customer under this Agreement will terminate and Customer shall (a) cease using the Services, (b) pay within thirty (30) days all amounts remaining unpaid under this Agreement, and (c) return all copies of Caselle's Confidential Information to Caselle or certify, in writing, the destruction thereof. Sections 2.7, 2.8, 3, 4, 5, 6.3, 7, 8, 9, 10, and any other provisions of this Agreement that, by their terms, contemplate continuing effectiveness beyond the term of this Agreement, will survive termination or expiration of this Agreement.

## 7. CONFIDENTIALITY

- 7.1. Confidential Information. "**Confidential Information**" means: (a) all software code, documentation and other materials included in or furnished by Caselle as part of the Services; and (b) any other non-public technical or business information of Caselle (or its licensors), including without limitation any information relating to Caselle's techniques, algorithms, software, hardware, firmware, know-how, current and future products, services, research, engineering, designs, financial information, procurement requirements, manufacturing, customer lists, business forecasts, strategies, marketing plans and information, the terms and conditions of this Agreement, and any other information of Caselle (or its licensors) that is conspicuously identified as confidential or proprietary at the time of disclosure or that Customer should otherwise reasonably understand to be confidential or proprietary to Caselle or its licensors due to the nature of the information or the circumstances of its disclosure.
- 7.2. Obligations. Customer will maintain the confidentiality of the Confidential Information using at least the same measures employed to protect Customer's own confidential information and in no event less than reasonable measures. Customer will limit the disclosure of Confidential Information to only its personnel with a bona fide need to access such Confidential Information in order to exercise Customer's rights and obligations under this Agreement, and then only provided that each such person is bound by a written confidentiality agreement that contains restrictions at least as protective as those set forth in this Agreement. Customer shall not use, publish, duplicate, exploit or dispose of Confidential Information with respect to its performance of its duties under this Agreement.
- 7.3. Injunction. Customer agrees that Caselle will suffer irreparable harm in the event that Customer breaches any obligations under this Section 7 and that monetary damages will be inadequate

to compensate Caselle for such breach. In the event of a breach or threatened breach of any of the provisions of this Section, Caselle, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity and without the necessity of posting bond or proving that it has no adequate remedy at law, shall be entitled to seek a temporary restraining order, preliminary injunction and/or permanent injunction in order to prevent or to restrain any such breach.

## 8. REPRESENTATIONS AND WARRANTIES

- 8.1. From Caselle. Caselle warrants that the Services: (a) will be provided in a professional manner and otherwise in accordance with generally recognized industry standards; and (b) will conform in all material respects to the Documentation. Customer's sole and exclusive remedy for any breach of the above warranty will be for Caselle to use commercially reasonable efforts, at no charge to Customer, to correct the non-compliance.
- 8.2. From Customer. Customer represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement. Customer represents that it has the requisite expertise to evaluate the suitability of, and has undertaken its own investigation of the suitability of, the Services and that it has relied upon its own skill and judgment in selecting the Services. Customer agrees it has determined that the Services meet Customer's needs. Customer assumes the entire risk of using the Services. Customer also represents and warrants that (a) its use of Customer Data complies with Data Protection Laws; (b) it has the legal right to use Customer Data and (c) it has the legal right to allow Caselle to process such Customer Data as set forth in this Agreement and any applicable Order.
- 8.3. Services Disclaimers. Except to the extent set forth in Section 8.1, THE SERVICES ARE PROVIDED AND ACCEPTED BY CUSTOMER "AS IS," AND "AS AVAILABLE" WITH NO REPRESENTATION OR WARRANTY OF ANY KIND. ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ABSENCE OF HIDDEN OR LATENT DEFECTS, TITLE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY EXPRESS OR IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE ARE SPECIFICALLY EXCLUDED AND DISCLAIMED. CASELLE DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, WILL OPERATE WITHOUT INTERRUPTION, WILL BE ERROR FREE, SECURE OR WITHOUT DEFECT, WILL BE ACCURATE, RELIABLE OR CORRECT, WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, WILL BE VIRUS FREE OR FREE OF OTHER HARMFUL COMPONENTS, OR THAT ALL FAILURES OF THE SERVICES WILL BE CORRECTED. CASELLE DOES NOT GUARANTEE ANY SPECIFIC RESULTS FROM THE USE OF THE SERVICES. IN PARTICULAR, THE OPERATION OF THE SERVICES MAY BE INTERRUPTED DUE TO MAINTENANCE, UPDATES, SYSTEM OR NETWORK FAILURES OR FAILURES IN THE SYSTEMS OF CASELLE'S THIRD PARTY SERVICE PROVIDERS. CASELLE DISCLAIMS ALL LIABILITY FOR DAMAGES CAUSED BY ANY SUCH INTERRUPTION, ERRORS IN FUNCTIONING, OR THIRD PARTY ACTS OR OMISSIONS INCLUDING, WITHOUT LIMITATION, LOSS OF CUSTOMER DATA. FURTHERMORE, CASELLE DISCLAIMS ALL LIABILITY FOR ANY MALFUNCTIONING, IMPOSSIBILITY OF ACCESS, OR POOR USE CONDITIONS OF ANY OF CASELLE'S WEBSITES OR HOSTED SERVERS DUE TO INAPPROPRIATE EQUIPMENT, DISTURBANCES RELATED TO INTERNET SERVICE OR TELECOMMUNICATIONS

PROVIDERS, AND FOR ANY OTHER REASON. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) CASELLE HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) CASELLE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL PERFORM WITHOUT INTERRUPTION OR ERROR; (c) CASELLE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES ARE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE; AND (d) CASELLE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL OPERATE OR BE COMPATIBLE WITH ANY THIRD PARTY HOSTED SERVICES OR HARDWARE.

## 9. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

- 9.1. Maximum Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CASELLE'S TOTAL AGGREGATE LIABILITY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE SERVICES (INCLUDING IN RELATION TO THE SEPARATE SPECIFIC TERMS) TO CUSTOMER OR A THIRD PARTY, FROM ANY CAUSE OF ACTION WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL BE LIMITED TO THE LESSER OF (a) THE AMOUNT OF ACTUAL DIRECT DAMAGES INCURRED BY CUSTOMER AND/OR THE THIRD PARTY, OR (b) THE AMOUNTS PAID TO CASELLE BY CUSTOMER FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE FOREGOING IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR A BREACH OF THIS AGREEMENT BY CASELLE. UNDER NO CIRCUMSTANCES WILL CASELLE BE RESPONSIBLE FOR ANY LOSS, DAMAGE OR INJURY RESULTING FROM HACKING OR OTHER UNAUTHORIZED ACCESS TO CUSTOMER'S ACCOUNT, CUSTOMER DATA OR ANY OTHER INFORMATION OF CUSTOMER OBTAINED BY CASELLE IN RELATION TO CUSTOMER'S USE OF THE SERVICES. IF CUSTOMER IS A CALIFORNIA RESIDENT, CUSTOMER EXPRESSLY WAIVES ITS RIGHTS WITH RESPECT TO CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."
- 9.2. Exclusion of Damages. IN NO EVENT WILL CASELLE BE LIABLE TO CUSTOMER FOR ANY LOSS, DAMAGES, CLAIMS OR COSTS WHATSOEVER ARISING FROM LOST REVENUE, LOSS OF BUSINESS, LOST OF ACTUAL OR ANTICIPATED PROFITS, LOST SAVINGS, LOSS OR CORRUPTION OF CUSTOMER DATA, INTERRUPTION OF BUSINESS, LOSS OF GOODWILL OR REPUTATION, INJURY, DEATH, OR FOR ANY OTHER CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY, ALL REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF CASELLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW IN CUSTOMER'S JURISDICTION.
- 9.3. Basis of Bargain. The foregoing limitations and exclusions are an essential part of the parties' agreement and will apply even if any remedy fails in its essential purpose.

- 9.4. Customer Indemnity. Customer agrees to defend, indemnify and hold Caselle, its parent, subsidiaries, affiliates, officers, managers, directors, shareholders, members, employees, agents and representatives harmless from and against any and all claims, losses, liabilities, damages, judgments, penalties, costs and expenses (including but not limited to reasonable attorneys' fees and collection costs) arising out of or related to (a) any suit, claim or proceeding relating to the processing of Customer Data, (b) Customer's or Customer's employees', agents', representatives' or Users' (collectively, "**Customer's Representatives**") use or misuse of the Services or negligent or willful misconduct, (c) any activity occurring under Customer account(s), (d) any misrepresentation by Customer, (e) Customer's Representatives' acts or omissions in connection with the Services, Customer's business operations, or Customer's products or services, (f) Customer or Customer's Representatives' violation of the rights of any third party including, without limitation, intellectual property rights or privacy rights, (g) any actual or alleged breach of Customer's representations, warranties or obligations set forth in this Agreement, the Order or the Documentation, (h) Customer's violation of any applicable law, rule or regulation, (i) any claim by Customer's customers in connection with the Services, Customer's business operations or Customer's products or services, and (j) any third party's access to Customer's account or the Services using Customer's account credentials.

## 10. MISCELLANEOUS

- 10.1. Independent Contractors. Caselle and Customer are independent contractors and shall so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.
- 10.2. Notices. Caselle may send notices pursuant to this Agreement to Customer's email contact points provided by Customer, and such notices will be deemed received twenty-four (24) hours after they are sent. Customer may send notices pursuant to this Agreement to sales@Caselle.com and such notices will be deemed received seventy-two (72) hours after they are sent. Either party may also send notices to the other party at the address provided in the introduction via recognized overnight carrier, and such notices will be deemed received the following business day if sent for next day delivery.
- 10.3. Severability. If any term or provision of this Agreement should be declared unlawful, void or unenforceable, the remaining terms and provisions of this Agreement shall be unimpaired and remain in full force and effect, and the unlawful, void or unenforceable term or provision will be deemed to be restated so as to be enforceable to the maximum extent permissible under applicable law.
- 10.4. Entire Agreement. This Agreement, together with any Orders and documents referenced in this Agreement, constitutes the entire agreement and understanding between Caselle and Customer relating to the subject matter of this Agreement and supersedes any and all previous and contemporaneous communications, proposals, warranties, representations or agreements, whether written or oral, with respect to the subject matter of this Agreement. Any term or condition in any document provided by Customer that is in addition to or inconsistent with the terms and conditions of this Agreement (but that purports to relate to the subject matter of this Agreement) is hereby expressly rejected, and Caselle's acceptance of any offer or order of

Customer is expressly made in reliance on Customer's assent to all of the terms and conditions of this Agreement.

- 10.5. Conflicts; Order of Precedence. In the event of a conflict between provisions of this Agreement, an Order, the Documentation, or other attachment, the following order of precedence will govern: (1) an Order, with more recent Orders taking precedence over earlier Orders; (2) this Agreement; and (3) the Documentation.
- 10.6. No Assignment. Customer shall not assign this Agreement, any interest in this Agreement, or any rights hereunder, or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without Caselle's prior express written approval, which approval shall not be unreasonably withheld. Any such purported assignment or delegation by Customer without Caselle's prior written consent will be null and void and of no force or effect. Caselle may assign this Agreement without Customer's prior written consent to an affiliate or in connection with a change of control, merger, acquisition, or sale of all or of substantially all of its assets.
- 10.7. Amendment. Caselle reserves the right, in our sole discretion, to modify or change the Services and/or this Agreement or any part thereof at any time without prior notice to Customer. Caselle may amend this Agreement by posting a Notice of Revision and revised Agreement on its website and/or delivering a Notice of Revision and revised Agreement to Customer through Customer's account (if applicable) or to Customer's contact email address, each of which will be effective as of the time of posting or delivery, as applicable. Customer is responsible for reviewing Caselle's website, Customer account, and contact email account on a regular basis. Customer's access to and use of any of the Services following the posting or delivery of an amendment constitutes Customer's consent to such amendment.
- 10.8. Choice of Law and Jurisdiction. This Agreement and the rights, duties and obligations of the parties hereto are to be governed by, construed and enforced according to the laws of the State of Delaware and applicable controlling U.S. federal law, without regard to any conflict of law rules or principles. Any dispute arising out of or related to this Agreement shall be resolved only in the state or federal courts located in New Castle County, Delaware, and Customer and Caselle hereby submit to the exclusive jurisdiction of such courts. Customer irrevocably agrees to waive any objection to the venue of any such suit or proceeding in Delaware, or to in personam jurisdiction, provided that service is effective. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- 10.9. Force Majeure. Caselle will not be responsible for any delay or failure to perform its obligations specified in this Agreement due to causes beyond Caselle's reasonable control including, without limitation, failure or malfunction of Customer's or third party service provider's equipment, disruptions of Internet protocol ("IP") service through intermediate carriers, acts of God, explosions, vandalism, cable cut, storms, fires, floods or other catastrophes, pandemics, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, work stoppages or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority.
- 10.10. Waiver. Failure by Caselle to enforce any rights or remedies under this Agreement or any Order will not be construed as a waiver of such rights or remedies, and a waiver by Caselle of a default

under this Agreement or any Order in one or more instances will not be construed as constituting a continuing waiver or as a waiver of any other rights or remedies under this Agreement or any Order. Caselle will not be deemed to have waived any rights or remedies under this Agreement or any Order unless such waiver is in writing and signed by a duly authorized representative of Caselle.

- 10.11. Use of Customer Name. Customer hereby consents to Caselle's use of Customer's name and logo to identify Customer as a customer or user of the Services in Caselle's marketing materials.
- 10.12. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

*[Remainder of page intentionally left blank]*