

## SOFTWARE AS A SERVICE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING ALSKA'S SERVICE. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND ALSKA. BY ACCESSING OR USING ALSKA'S SOFTWARE OR SERVICE, YOU ("USER") SIGNIFY ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE SERVICE. IF THE PARTIES HAVE A FULLY EXECUTED AGREEMENT THAT EXPRESSLY GOVERNS ORDERS FOR ALSKA'S SOFTWARE AS A SERVICE, SUCH AGREEMENT SHALL SUPERSEDE THIS AGREEMENT.

**BY CLICKING THE "I ACCEPT" BUTTON OR OTHERWISE ACCESSING THE SERVICE, YOU INDICATE THAT YOU INTEND YOUR ACT TO SERVE AS YOUR SIGNATURE TO THIS AGREEMENT AND TO HAVE THE SAME FORCE AND EFFECT AS THE USE OF A MANUAL SIGNATURE, AND IF YOU ARE INSTALLING, USING OR OTHERWISE ACCESSING THE SERVICE IN YOUR CAPACITY AS AN EMPLOYEE OR AGENT OF A BUSINESS ENTITY, YOU WARRANT THAT YOU HAVE ACTUAL AUTHORITY TO LEGALLY BIND SUCH ENTITY TO THIS AGREEMENT.**

This Software as a Service Agreement ("Agreement") is entered into between CareQuo, LLC, dba Alska, a Minnesota limited liability company with its principal place of business at 6 W. 5th Street, St. Paul, MN 55102 and User. Alska and User agree that the following terms and conditions will apply to the services provided under this Agreement:

1. **DEFINITIONS.** In addition to terms defined elsewhere in this Agreement, the following terms are specified as defined below:
  - a. "Account Holder" means the User who establishes an account with Alska and who is financially responsible for the Service.
  - b. "Applicable Law" means all applicable state and federal laws and regulations, including intellectual property and other substantive law.
  - c. "Client" means the User who the Service is being used to support or assist.
  - d. "De-Identified Information" means information that has been de-identified in accordance with the provisions of our Privacy Policy, and "De-Identify" means make information into De-Identified Information.
  - e. "Documentation" means the user guides, online help, release notes, training materials and other documentation provided or made available by Alska to User regarding the use or operation of the Service.
  - f. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No.104-191, including all implementing regulations and all amendments.
  - g. "HITECH" means the Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, §§ 13001-13424, including all implementing regulations and all amendments.
  - h. "Host" means the computer equipment on which the Software is installed, which is owned and operated by Alska or its subcontractors.
  - i. "Personal Data" means any information that can be used on its own or with other information to identify, contact, or locate a sign person or to identify an individual in context.

- j. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- k. "Protected Health Information" (PHI) has the meaning as defined in Section 160.103 of HIPAA.
- l. "Service" refers to Alska's internet-accessible service that provides use of Software that is hosted by Alska or its services provider and made available to User over a network on a term-use basis.
- m. "Software" means the object code version of any software to which User is provided access as part of the Service, including any updates or new versions.
- n. "Subscription Term" shall mean that period during which User will have on-line access and use of the Software through Alska's Service.
- o. "Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 160 and part 164, subparts A and C.
- p. "User" means each individual authorized by Alska to have access to the Service.
- q. "User Content" means all data and materials provided by User or a third party on User's behalf to Alska for use in connection with the Service, including, without limitation, photographs and videos, personal health records, and communications between caregiving teams.
- r. "Website" means <http://alskacare.com>.

## **2. SERVICE**

- a. During the Subscription Term, User will receive a nonexclusive, non-assignable, royalty free, worldwide right and license to access and use the Service solely for the purpose of supporting a Client and his/her caregivers subject to the terms of this Agreement.
- b. User acknowledges that this Agreement is a services agreement and Alska will not deliver copies of the Software to User as part of the Service.

## **3. USER INFORMATION AND COMPLIANCE WITH HIPAA**

- a. Alska may collect and utilize performance data, usage data and other technical information gathered as part of your use of the Service or any such other services in order to better serve its customers, facilitate problem trouble shooting and improve and enhance Alska's various product and service offerings. Such information will not be disclosed in a form that specifically identifies you or any other person. Usage data may also be used in aggregate. Usage will be collected and shared with third parties after Personal Data is removed from the usage data. You hereby consent to the collection and use of such information and data as described herein.
- b. Certain provisions of HIPAA may apply to You, Alska, and our relationship and operation under this Agreement. Should PHI be made available, or obtained by Alska, we do hereby assure you that we will: (i) comply with the rules and regulations concerning the privacy and security of PHI under HIPAA; (ii) require the utilization of a Business Associate Addendum, in the event that confidential information will be disclosed (this addendum may be provided by Alska upon request); (iii) not use or disclose any PHI except in the course of meeting our

contractual obligations or as required by law; ensure that agents or subcontractors working on our behalf agree to the same restrictions; protect against any non-permitted use or disclosure of PHI using no less than a reasonable amount of care; (iv) report any non-compliance of which we become aware; (v) at your request and direction, if feasible, make available PHI in accordance within the requirements of HIPAA; (vi) upon reasonable notice and during normal business hours, allow the Secretary of the U.S. Department of Health and Human Services the right to audit our records and practices related to the use and disclosure of PHI to ensure compliance; (vii) upon termination of contract or upon request, if feasible, return or destroy all PHI received or created as a result of any contract and retain no copies; have named a HIPAA Security Official who creates, maintains, and trains regarding our HIPAA policies and procedures; (viii) have established that all employees with access to PHI receive training on our policies and procedures according to HIPAA mandates.

YOU ARE RESPONSIBLE FOR GIVING ANY NOTICES REQUIRED UNDER ANY STATE OR FEDERAL LAW OR REGULATION, INCLUDING ANY NOTICES REQUIRED UNDER HIPAA. YOU ARE ALSO RESPONSIBLE FOR ENSURING COMPLIANCE WITH ALL REQUIREMENTS IMPOSED BY HIPAA OR ANY OTHER LAW OR REGULATION WITH RESPECT TO ANY DATA RETRIEVED OR SAVED FROM THE SERVICE. WE MAKE NO REPRESENTATION AS TO WHAT STEPS YOU MUST FOLLOW TO COMPLY WITH HIPAA OR ANY OTHER LAW OR REGULATION.

#### **4. RESTRICTIONS**

- a. User shall not, and shall not permit anyone to: (i) copy or republish the Service or Software, (ii) make the Service available to any person other than an authorized User, (iii) use or access the Service to provide service bureau, time-sharing or other computer hosting services to third parties, (iv) modify or create derivative works based upon the Service or Documentation, (v) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the software used to provide the Service or in the Documentation, (vi) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software used to provide the Service, except and only to the extent such activity is expressly permitted by applicable law, or (vii) access the Service or use the Documentation in order to build a similar product or competitive product. Subject to the limited licenses granted herein, Alaska shall own all right, title and interest in and to the Software, services, Documentation, and other deliverables provided under this Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and intellectual property rights therein. User agrees to assign all right, title and interest it may have in the foregoing to Alaska.

#### **5. USER AND ACCOUNT HOLDER RESPONSIBILITIES**

- b. Compliance with Laws. User shall comply with all applicable local, state, national and foreign laws in connection with its use of the Service, including those laws related to data privacy, international communications, and the transmission of technical or personal data. User acknowledges that Alaska exercises no control

- over the content of the information transmitted by User through the Service. User shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.
- c. Unauthorized Use; False Information. User shall: (a) notify Alska immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (b) report to Alska immediately and use reasonable efforts to stop any unauthorized use of the Service that is known or suspected by User, and (c) not provide false identity information to gain access to or use the Service.
  - d. Account Holder-Granted Access. Account Holder shall be solely responsible for the acts and omissions of any third party that Account Holder grants access as a User. Alska shall not be liable for any loss of data or functionality caused directly or indirectly by any User that Account Holder granted access to.
  - e. User Input. User is solely responsible for collecting, inputting and updating all User Content stored on the Host, and for ensuring that the User Content does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious. User shall: (i) notify Alska immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (ii) report to Alska immediately and use reasonable efforts to stop any unauthorized use of the Service that is known or suspected by User, and (iii) not provide false identity information to gain access to or use the Service.
  - f. License from User. Subject to the terms and conditions of this Agreement, User shall grant to Alska a limited, non-exclusive and license, to copy, store, configure, perform, display and transmit User Content solely as necessary to provide the Service to User or Account Holder. Alska shall have the right to transfer and to sublicense this license to Account Holder during the term of this Agreement and upon its expiration or termination.
  - g. Ownership and Restrictions. User retains ownership and intellectual property rights in and to its User Content. Alska or its licensors retain all ownership and intellectual property rights to the services, Software programs, and anything developed and delivered under the Agreement. Should any third party technology that may be appropriate or necessary for use with the Service, User's right to use such third party technology shall be governed by the terms of the third party technology license agreement specified by Alska and not under this Agreement.
  - h. Suggestions; Recommended Improvements. Alska shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Service any suggestions, enhancement requests, recommendation or other feedback provided by User, including Users, relating to the operation of the Service.
  - i. Safeguards. User will be solely responsible to implement and maintain appropriate administrative, physical and technical safeguards to protect the data and information within the Service from unauthorized access, use or alteration or using a User ID assigned to the User. Such safeguards shall comply with federal, state, and local requirements, including the Privacy Rule and the Security Rule,

whether or not you are otherwise subject to HIPAA. User will maintain appropriate security with regard to all personnel, systems, and administrative processes used by User or their parties authorized by User to transmit, store and process electronic health information through the use of the Service.

## 6. FEES AND PAYMENT; TAXES

- a. Fees and Payment. Alska shall invoice Account Holder for all fees set out on the pricing schedule on the Website. Account Holder shall pay all invoices by electronic payment upon presentment. Except as otherwise provided on the Website, fees are non-refundable. All fees are stated in United States Dollars, and must be paid by User to Alska in United States Dollars.
- b. Taxes. Alska shall bill Account Holder for applicable taxes as a separate line item on each invoice. Account Holder shall be responsible for payment of all sales and use taxes, or similar charges relating to Account Holder's use of the services.

## 7. TERM AND TERMINATION

- a. Term of Agreement. The term of this Agreement shall begin on the Effective Date and shall continue until terminated by either party as outlined in this Section.
- b. Termination. Alska has the right to terminate this Agreement upon written notice to the Account Holder for any reason or no reason at all. Account Holder has the right to terminate this Agreement upon written notice to Alska with the effective date of such notice being the last day of the month in which the notice is given.
- c. Suspension for Non-Payment. Alska reserves the right to suspend delivery of the Service if Account Holder fails to timely pay any amounts due to Alska under this Agreement. Suspension of the Service shall not release Account Holder of its payment obligations under this Agreement. User agrees that Alska shall not be liable to User, Account Holder, or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the Service resulting from Account Holder's nonpayment.
- d. Suspension for Ongoing Harm. Alska reserves the right to suspend delivery of the Service if Alska reasonably concludes that User use of the Service is causing immediate and ongoing harm to Alska or others. In the extraordinary case that Alska must suspend delivery of the Service, Alska shall immediately notify Account Holder and all Users authorized by Account Holder of the suspension. Alska shall not be liable to User, Account Holder, or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the Service in accordance with this Section 6(d). Nothing in this Section 6(d) will limit Alska's rights under Section 6(e) below.
- e. Effect of Termination.
  - i. Upon termination of this Agreement or expiration of the Subscription Term, Alska shall immediately cease providing the Service and all usage rights granted under this Agreement shall terminate.
  - ii. If Alska terminates this Agreement due to a breach by Account Holder, then Account Holder shall immediately pay to Alska all amounts then due under this Agreement and to become due during the remaining term of

this Agreement, but for such termination. If Account Holder terminates this Agreement due to a breach by Alska, then Alska shall immediately repay to Account Holder all pre-paid amounts for any unperformed Service scheduled to be delivered after the termination date.

- iii. Upon termination of this Agreement and upon subsequent written request by the disclosing party, the receiving party of tangible Confidential Information shall immediately return such information or destroy such information and provide written certification of such destruction, provided that the receiving party may retain an archival copy of such information in the event of a subsequent dispute between the parties.
- f. Return of User Content; Data. Alska shall have no obligation upon the termination or expiration of the Service to return any User Content or Data to Account Holder or any User. Alska may elect in its discretion to offer an additional service to provide Account Holder access to the Account Holder's User Content stored with Alska. Account Holder shall be responsible for any fees arising from the transfer to Account Holder of User Content.

## 8. WARRANTIES

- a. Warranty. Alska represents and warrants that it will provide the Service in a professional manner consistent with general industry standards and that the Service will perform substantially in accordance with the Documentation. For any breach of a warranty, User's exclusive remedy shall be as provided in Section 6, Term and Termination.
- b. No Healthcare Advice or Treatment Provided. Users who are healthcare providers will be solely responsible for the professional, advisory, analytical, medical and technical services they provide through the Service. Alska makes no representations concerning the completeness, accuracy, availability or utility of any information in the Service, or concerning the qualifications or competence of individuals who placed it there. Alska has no liability for the consequences to any User based on their use of the Service. Alska is not and shall not be responsible for any healthcare related advice, emergencies and/or treatment. The Service is not a substitute for healthcare advice, treatment and/or services provided by a personal physician or other qualified healthcare provider. Alska and the Service merely facilitate care coordination, but do not provide healthcare services. Always seek the advice of a physician or other qualified health care professional with any questions regarding medical symptoms or a medical condition. Never disregard professional medical advice or delay in seeking it because of something you have read on the Website or through the Service. If you think you or someone you are taking care of has a medical emergency, call 911 or go to the nearest hospital.
- c. Accuracy of User Content. The User Content was created by and is maintained solely by third parties other than Alska. Alska does not verify the accuracy or completeness of the User Content. The accuracy and completeness of the User Content is entirely the responsibility of each User. User understands, therefore, that Alska shall not be liable to User or any third party for any errors, omissions or inaccuracies contained in the User Content.
- d. Links to Third Party Sites. Alska is not responsible for the contents of any third-party sites or services, any links contained in third-party sites or services, or any

changes or updates to third-party sites or services. Alska is providing these links and access to third-party sites and services to User only as a convenience, and the inclusion of any link or access does not imply an endorsement by Alska of the third-party site or service.

- e. ALSKA WARRANTS THAT THE SERVICE WILL PERFORM IN ALL MATERIAL RESPECTS IN ACCORDANCE WITH THE DOCUMENTATION. ALSKA DOES NOT GUARANTEE THAT THE SERVICE WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT ALSKA WILL CORRECT ALL SERVICE ERRORS. USER ACKNOWLEDGES THAT ALSKA DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. THIS SECTION SETS FORTH THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY ALSKA (EXPRESS OR IMPLIED) WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. NEITHER ALSKA NOR ANY OF ITS LICENSORS OR OTHER SUPPLIERS WARRANT OR GUARANTEE THAT THE OPERATION OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED, VIRUS-FREE OR ERROR-FREE, NOR SHALL ALSKA OR ANY OF ITS SERVICE PROVIDERS BE LIABLE FOR UNAUTHORIZED ALTERATION, THEFT OR DESTRUCTION OF USER'S CONTENT OR ANY USER'S DATA, OR FILES.

## **9. LIMITATIONS OF LIABILITY**

- a. NEITHER PARTY (NOR ANY LICENSOR OR OTHER SUPPLIER OF ALSKA) SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST BUSINESS, PROFITS, DATA OR USE OF ANY SERVICE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), EVEN IF FORESEEABLE OR THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), SHALL EXCEED THE FEES PAID OR PAYABLE BY ACCOUNT HOLDER UNDER THIS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE. The foregoing limitations shall not apply to the parties' obligations (or any breach thereof) under Sections "Restrictions", "Indemnification" or "Confidentiality".

## **10. INDEMNIFICATION**

- a. Indemnification by Alska. If a third party makes a claim against User that the Service infringes any patent, copyright or trademark, or misappropriates any trade secret, or that Alska's negligence or willful misconduct has caused bodily injury or death, Alska shall defend User and its directors, officers and employees against the claim at Alska's expense and Alska shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Alska, to

the extent arising from the claim. Alska shall have no liability for any claim based on (a) the User Content, (b) modification of the Service not authorized by Alska, or (c) use of the Service other than in accordance with the Documentation and this Agreement. Alska may, at its sole option and expense, procure for User the right to continue use of the Service, modify the Service in a manner that does not materially impair the functionality, or terminate the Subscription Term and repay to User any amount paid by User with respect to the Subscription Term following the termination date.

- b. Indemnification by User. If a third party makes a claim against Alska that the User Content infringes any patent, copyright or trademark, or misappropriates any trade secret, User shall defend Alska and its directors, officers and employees against the claim at User's expense and User shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed by User, to the extent arising from the claim.
- c. Conditions for Indemnification. A party seeking indemnification under this section shall (a) promptly notify the other party of the claim, (b) give the other party sole control of the defense and settlement of the claim, and (c) provide, at the other party's expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defense and settlement of the claim.

## 11. CONFIDENTIALITY

- a. Definition. "Confidential Information" means any information disclosed by a party to the other party, directly or indirectly, which, (a) if in written, graphic, machine-readable or other tangible form, is marked as "confidential" or "proprietary," (b) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the receiving party to be "confidential" or "proprietary" within 30 days of such disclosure, (c) is specifically deemed to be confidential by the terms of this Agreement, or (d) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself. Confidential Information will also include information disclosed by third parties to a disclosing party under an obligation of confidentiality. Subject to the display of User Content as contemplated by this Agreement, User Content is deemed Confidential Information of User. Alska software and Documentation are deemed Confidential Information of Alska.
- b. Confidentiality. During the term of this Agreement and for five (5) years thereafter (perpetually in the case of the Software), each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other party. Each party shall promptly notify the



other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each party may disclose Confidential Information of the other party on a need-to-know basis to its contractors who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services on behalf of the receiving party.

- c. Exceptions. Confidential Information excludes information that: (a) is known publicly at the time of the disclosure or becomes known publicly after disclosure through no fault of the receiving party, (b) is known to the receiving party, without restriction, at the time of disclosure or becomes known to the receiving party, without restriction, from a source other than the disclosing party not bound by confidentiality obligations to the disclosing party, or (c) is independently developed by the receiving party without use of the Confidential Information as demonstrated by the written records of the receiving party. The receiving party may disclose Confidential Information of the other party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the receiving party shall use reasonable efforts to promptly notify the other party prior to such disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Each party may disclose the existence of this Agreement and the relationship of the parties, but agrees that the specific terms of this Agreement will be treated as Confidential Information; provided, however, that each party may disclose the terms of this Agreement to those with a need to know and under a duty of confidentiality such as accountants, lawyers, bankers and investors.

## 12. GENERAL PROVISIONS

- d. Non-Exclusive Service. User acknowledges that Service is provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict Alska's ability to provide the Service or other technology, including any features or functionality first developed for User, to other parties.
- e. Personal Data. User hereby acknowledges and agrees that Alska's performance of this Agreement may require Alska to process, transmit and/or store User personal data or the personal data of User. By submitting personal data to Alska, User agrees that Alska and its affiliates may process, transmit and/or store personal data only to the extent necessary for, and for the sole purpose of, enabling Alska to perform its obligations to under this Agreement. In relation to all Personal Data provided by or through User to Alska, User will be responsible as sole Data Controller for complying with all applicable data protection or similar laws such as EU Directive 95/46/EC and laws implementing that Directive that regulate the processing of Personal Data and special categories of data as such terms are defined in that Directive. User agrees to obtain all necessary consents and make all necessary disclosures before including Personal Data in Content and using the Enabling Software and Alska SaaS. User confirms that User is solely responsible for any Personal Data that may be contained in User Content, including any information that any Alska SaaS User shares with third parties on

User's behalf. User is solely responsible for determining the purposes and means of processing User Personal Data by Alska under this Agreement, including that such processing according to User's instructions will not place Alska in breach of applicable data protection laws. Prior to processing, User will inform Alska about any special categories of data contained within User Personal Data and any restrictions or special requirements in the processing of such special categories of data, including any cross border transfer restrictions. User is responsible for ensuring that the Alska SaaS meets such restrictions or special requirements. Alska to process any Personal Data that meets the requirements set forth in this Section according to these Terms of Use.

- f. Alska Personal Data Obligations. In performing the Service, Alska will comply with the Alska Privacy Policy, which is available at <http://www.Alska.com/privacy-policy> and incorporated herein by reference. The Privacy Policy is subject to change at Alska's discretion; however, Alska policy changes will not result in a material reduction in the level of protection provided for User data during the period for which fees for the services have been paid. The services policies referenced in this Agreement specify our respective responsibilities for maintaining the security of User data in connection with the Service Alska reserves the right to provide the Service from Host locations, and/or through use of subcontractors, worldwide. Alska subscribes to the United States/European Union Safe Harbor Principles, and as a result, appears on the U.S. Department of Commerce Safe Harbor list (available at <http://www.export.gov/safeharbor>) as of the effective date of this Agreement. Alska's Safe Harbor certification specifically includes Alska's performance of services for User provided personal information. Alska will only process User Personal Data in a manner that is reasonably necessary to provide Service and only for that purpose. Alska will only process User Personal Data in delivering Alska SaaS. User agrees to provide any notices and obtain any consent related to Alska's use of the data for provisioning the Service, including those related to the collection, use, processing, transfer and disclosure of personal information. User shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and retains ownership of all of User data.
- g. Assignment. Neither party may assign this Agreement or any right under this Agreement, without the consent of the other party, which consent shall not be unreasonably withheld or delayed; provided however, that either party may assign this Agreement to an acquirer of all or substantially all of the business of such party to which this Agreement relates, whether by merger, asset sale or otherwise. This Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns. Either party may employ subcontractors in performing its duties under this Agreement, provided, however, that such party shall not be relieved of any obligation under this Agreement.
- h. Notices. Except as otherwise permitted in this Agreement, notices under this Agreement shall be in writing and shall be deemed to have been given (a) five (5) business days after mailing if sent by registered or certified U.S. mail, (b) when transmitted if sent by facsimile, provided that a copy of the notice is promptly sent by another means specified in this section, or (c) when delivered if delivered personally or sent by express courier service. All notices shall be sent to the other party at the address set forth on the cover page of this Agreement.
- i. Force Majeure. Each party will be excused from performance for any period

- during which, and to the extent that, such party or any subcontractor is prevented from performing any obligation or Service, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of terrorism or war, epidemics, communication line failures, and power failures.
- j. Waiver. No waiver shall be effective unless it is in writing and signed by the waiving party. The waiver by either party of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach.
  - k. Severability. If any term of this Agreement is held to be invalid or unenforceable, that term shall be reformed to achieve as nearly as possible the same effect as the original term, and the remainder of this Agreement shall remain in full force.
  - l. Entire Agreement. This Agreement, including any instruments incorporated by reference, contains the entire agreement of the parties and supersedes all previous oral and written communications by the parties, concerning the subject matter of this Agreement. This Agreement may be amended solely in a writing signed by both parties.
  - m. Survival. Those provisions of this Agreement that by their nature are intended to survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement for any reason.
  - n. Export Regulations. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Service. User agrees that such export control laws govern its use of the Service (including technical data) and any services deliverables provided under this Agreement, and User agrees to comply with all such export laws and regulations. User agrees that no data, information, software programs and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws.
  - o. No Third Party Beneficiaries. This Agreement is an agreement between the parties, and confers no rights upon either party's employees, agents, contractors, partners of Users or upon any other person or entity.
  - p. Independent Contractor. The parties have the status of independent contractors, and nothing in this Agreement or the conduct of the parties will be deemed to place the parties in any other relationship. Except as provided in this Agreement, neither party shall be responsible for the acts or omissions of the other party or the other party's personnel.
  - q. Aggregate and Non-Identifiable Data. Alska may compile aggregate and non-identifiable data from the use of the Service for purposes of improving the Service and for any business purpose that complies with Applicable Law, provided that such information does not identify Account Holder, User, or any Personal Information or Protected Health Information of any User. User hereby transfers and assigns to Alska all right, title and interest in and to all De-Identified Information free of any fee or charge whatsoever. User agrees that Alska may use, disclose, market, license and sell such De-Identified Information for any purpose without restriction, and that User has no interest in such information, or in the proceeds of any sale, license, or other commercialization thereof. User acknowledges that the rights conferred by this section are the principal consideration for the provision of the Service, without which Alska would not enter into this Agreement.
  - r. Compliance with Laws. Alska shall comply with all applicable local, state,

national and foreign laws in connection with its delivery of the Service, including those laws related to data privacy, international communications, and the transmission of technical or personal data

- s. Governing Law. This Agreement shall be governed by the laws of the State of Minnesota, excluding its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- t. Arbitration. The satisfaction of Account Holder and all Users is an important objective to Alska in performing its obligations under this Agreement. Except with respect to intellectual property rights or obligations of confidentiality, if a dispute arises between the parties relating to the interpretation or performance of this Agreement, the parties agree that such dispute will be submitted for arbitration to a three-arbitrator panel. Unless provided otherwise in this Agreement, the arbitration proceeding shall be heard in accordance with the then-existing Commercial Arbitration Rules of the American Arbitration Association (“AAA”). All matters within the scope of the Federal Arbitration Act (9 U.S.C. §§ 1, *et seq.*) will be governed by it and not by any state arbitration law. The arbitration proceedings shall be held in Minneapolis, Minnesota. The arbitrators shall follow the terms of this Agreement, shall be bound to apply the applicable law, and shall not rule inconsistently with the applicable law. The award of the arbitrators shall be conclusive and binding upon all parties hereto and judgment upon the award may be entered in any court of competent jurisdiction. The parties further agree that, in connection with any such arbitration proceeding, each shall submit or file any claim which would constitute a compulsory counterclaim (as defined by the then-current compulsory counterclaim rule of the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any such claim, which is not submitted or filed in such proceeding, shall be forever barred. The arbitrators may not consider any settlement discussions or offers that might have been made by either party. The parties agree that arbitration shall be conducted on an individual, not a class-wide or group, basis, that only the parties and their respective affiliates, owners, officers, directors, agents and employees may be the parties to any arbitration proceeding described in this Section, and that no such arbitration proceeding shall be consolidated with any other arbitration proceeding involving Alska and/or any other person. The parties also agree that in the event of individual arbitrations involving the same or similar issues filed at or about the same time (whether or not originally filed improperly as a class action, group or consolidated arbitration and then separated into individual arbitrations), no arbitrator shall be an arbitrator in more than one of those individual arbitrations. The provisions of this Section are intended to benefit and bind certain third parties and will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.