



## Hosted Software Solution

This Hosted Software Solution (this “**Agreement**”) is made on the date of the last signature on the Order Form (the “**Effective Date**”) between Spōk, Inc., whose principal place of business is at 5911 Kingstowne Village Parkway, 6<sup>th</sup> Fl, Alexandria VA 22315, a Delaware Corporation (“**Spōk**”) and Customer as set forth on the Spok Order Form (“**Customer**”).

The parties agree as follows:

### **Definitions.**

“**Affiliate**” means, with respect to a party, any other person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such party. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

“**Authorized User**” means Customer’s employees, consultants, contractors, and agents who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement.

“**Confidential Information**” means: (a) Customer Data; (b) the terms of this Agreement; (c) any commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party for purposes arising out of or in connection with this Agreement, that is marked “confidential” or “proprietary” or is otherwise indicated as being confidential or proprietary, or under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary; and (d) any reproduction of any of the foregoing, or any part thereof, in any form or medium. The following shall not be deemed Confidential Information: (1) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the receiving party; (2) information that was rightfully in the receiving party’s possession without restriction prior to disclosure; (3) information that was rightfully disclosed to the receiving party by a third party without restriction; (4) information that was independently developed by employees and/or contractors of the receiving party who did not have access to and without use of or reference to the disclosing party’s Confidential Information; and (5) aggregate or de-identified data collected or generated by Spōk or on behalf of Spōk regarding Spōk’s products and services (for purposes of providing or improving Spōk products and services, benchmarking system performance, preparing statistics and system metrics, marketing and other purposes) that does not contain Personal Data or Customer-specific information.

“**Customer Data**” means all electronic data or information submitted to and stored in the Service by or on behalf of Customer or any Authorized Users, including without limitation any Personal Data.

“**Documentation**” means Spōk’s user manuals, handbooks, and guides relating to the Services provided by Spōk to Customer either electronically or in hard copy form, including any end user documentation relating to the Services available.

“**Electronic Communications**” means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

“**Order Form**” means a Spōk order form in the name of and executed by Customer or its Affiliate and accepted by Spōk which specifies the Service, and any Professional Services to be provided by Spōk subject to the terms of this Agreement.

**“Personal Data”** means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonable be linked, directly or indirectly, with a particular individual or household, that is processed by Spök or its agents for or on behalf of Customer under this Agreement. “Personal Data” does not include data that has been aggregated or de-identified in accordance with applicable laws.

**“Professional Services”** means the general consulting, implementation and/or training services to be provided to Customer pursuant to a Statement of Work.

**“Service”** means, collectively, Spök’s Hosted Care Connect business suite and other services as described in the applicable Order Form and any subsequent Order Form from time to time, including Support Services and Professional Services.

**“Spök IP (Intellectual Property)”** means the Service, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Spök IP includes Usage Data and any information, data, or other content derived from Spök’s monitoring of Customer’s access to or use of the Service, but does not include Customer Data.

**1. Subscription Service.** Subject to the terms and conditions of this Agreement and during the Term, Spök shall use commercially reasonable efforts to make the Service available to Customer solely for use by the number of Authorized Users specified in the applicable Order Form for Customer’s internal business operations. The terms of this Agreement shall also apply to updates and upgrades subsequently provided by Spök to Customer for the Service.

**2. Order Forms.** The Service shall be ordered by Customer pursuant to Order Forms attached hereto. Each Order Form shall be incorporated into this Agreement and shall include at a minimum a listing of the Service and any Professional Services being ordered and the associated fees. Except as otherwise provided on the Order Form or this Agreement, each Order Form is non-cancellable and shall be subject to the terms and conditions of this Agreement. For any order by Customer or its Affiliate for the benefit of Customer’s Affiliate(s), the term “Customer” shall refer to Customer and such Affiliate(s).

### **3. General Responsibilities.**

**3.1. Access.** Customer shall be responsible for all activities conducted under its user logins (including, without limitation, administrator logins, dual authentication) and for Authorized Users’ compliance with this Agreement, and any applicable laws. Customer’s use of the Service shall not include reselling, sublicensing, or time-sharing of the Service. Customer shall not: (a) copy, translate, modify, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Service or Documentation or any part thereof or otherwise attempt to discover any source code or modify the Service in any manner or form unless expressly permitted by Spök; (b) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Service or Documentation; (c) remove any proprietary notices from the Service or Documentation; (d) access or use the Service to circumvent or exceed Service account limitations or requirements; (e) use the Service for the purpose of building a similar or competitive product or service, (f) obtain unauthorized access to the Service; (g) use the Service in a manner that is contrary to applicable law or in violation of any intellectual property right or other right of any person; (h) publish, post, upload or otherwise transmit Customer Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property; or (i) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Service.

**3.2. Equipment.** Customer shall be responsible for obtaining and maintaining any equipment and ancillary services, needed or used to connect to, access or otherwise use the Service, including, without limitation, Personal Computers, workstations, operating systems, servers or networking and the like (collectively, “**Equipment**”). Customer shall also be responsible for maintaining the security of the Equipment, Customer’s account(s), passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment that may occur with or without Customer’s knowledge or authorization.

**3.3. Compliance with Laws.** Customer shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service and the Customer Data related thereto, including without limitation those related to data protection, electronic communications, transmission of technical or Personal Data, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) and its implementing regulations; the medical device reporting requirements set forth at 21 C.F.R. Part 803, Subpart C; the prevention of health care fraud, waste and abuse; and other similar laws and regulations that are applicable to the Customer. Without limiting the foregoing, Customer will not send any Electronic Communication from the Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the Service by any means other than through the interfaces that are provided by Spök. Customer shall not do any “mirroring” or “framing” of any part of the Service, or create Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies. Customer will not in any way express or imply that any opinions contained in Customer’s Electronic Communications are endorsed by Spök. Customer shall ensure that all access and use of the Service by Authorized Users is in accordance with the terms and conditions of this Agreement and any exhibit, attachment, or addendum hereto. Any action or breach by any such Authorized User shall be deemed an action or breach by Customer. Customer understands and agrees that any Product used to assist in providing system notification to its users is limited to secondary notification only and the Customer’s own systems provide primary notification. Spök disclaims any warranty or responsibility for providing system notification to Customer’s users.

**3.4. Compliance with HIPAA.** To the extent that the regulations implementing the Health Insurance Portability and Accountability Act of 1996, Subtitle D of the Health Information Technology for Economic and Clinical Health Act of 2009, and any regulations promulgated under these laws, as amended, (hereafter collectively, “**HIPAA**”) apply to customer and Spök’s provision of the Service. Customer shall notify Spök, in writing, prior to Spök’s provision of the Service that implicates HIPAA. If HIPAA does apply, Customer and Spök hereby agree to conduct activities in such a manner as to facilitate compliance with HIPAA, including entering into a Business Associate Agreement (“**BAA**” which shall be incorporated into this Agreement by reference. Spök and Customer will agree to negotiate such document in good faith the terms of any such BAA. If Spök and Customer cannot agree upon the terms of the BAA, Spök may terminate this Agreement upon thirty (30) days’ written notice.

#### **4. Term, Fee, Payment & Taxes.**

**4.1. Term.** The term of this Agreement and the initial subscription term of the Service shall commence on the Effective Date and shall continue for thirty-six (36) months (the “**Initial Term**”). Thereafter, the subscription term of the applicable Service shall be extended and automatically renewed for successive periods of one (1) year each (each, a “**Renewal Term**”, and all Renewal Terms collectively with the Initial Term, the “**Term**”), unless either party provides written notice of non-renewal to the other at least ninety (90) days before such expiration.

#### **4.2. Fees and Payment.**

**(a)** Customer shall pay the fees as set forth on the Order Form. All fees will be invoiced for a twelve (12) month period on the Effective Date, and annually thereafter in advance of each subsequent twelve (12) month subscription period. Customer shall pay all undisputed fees within thirty (30) days after the applicable invoice date.

All fees are non-refundable except as otherwise expressly stated in the applicable Order Form or this Agreement. In the event that Customer disputes any invoiced amount, Customer shall pay all undisputed amounts in accordance with this section and deliver to Spök written notice of any disputed amounts detailing the reason for the dispute within thirty (30) days after the applicable invoice date. Any failure by Customer to dispute any invoiced amounts within thirty (30) days after the applicable invoice date shall be deemed acceptance by Customer of such amounts.

**(b)** Customer's annual pricing for the Service will be as listed on the executed Order Form. In the event of any change in user fees, Spök will provide written notice ninety (90) days prior to the next renewal period. The fees and the term of use for additional service lines procured or increased usage fees during an existing subscription term will co-terminate with and be prorated through the end date of the subscription term for the Service. Pricing for Renewal Terms shall be set at then current Spök pricing, unless otherwise agreed to in writing by the parties.

**4.3. Taxes.** Spök fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on Spök's net income. If Spök has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Spök with a valid tax exemption certificate authorized by the appropriate taxing authority.

**4.4. Late Payments.** Any late payments shall be subject to a service charge equal to 1.5% of the amount due (calculated on a monthly basis) or the maximum amount allowed by law, whichever is less. Customer shall reimburse Spök for all reasonable costs incurred by Spök in collecting late payments or interest, including attorneys' fees, court costs, and collection agency fees.

**4.5. Audits.** Customer shall maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of two years after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. Spök, at its own expense, will audit Customer's records annually with respect to matters covered by this Agreement, provided that if such audit reveals that Customer has underpaid Spök with respect to any amounts due and payable during the Term, Customer will be provided with a notice ninety (90) days prior to annual invoicing of the revised user fees. This Section 4.5 will survive any termination or expiration of this Agreement for a period of two years.

## **5. Additional Terms of Service.**

**5.1. Accuracy of Customer's Contact Information.** Customer shall provide accurate, current and complete information, including Customer's legal business name, address, e-mail address, telephone number, and the name and contact information of the primary contact individual who oversees this Agreement. Customer Agrees to ensure that it maintains and promptly updates Spök of any changes to such information.

**5.2. Authorized Users: Passwords, Access and Notification.** Customer shall authorize access to and assign unique, usernames and passwords to the Authorized Users determined by Customer on the Order Form. Customer acknowledges and agrees that Authorized User logins are for designated Authorized Users and cannot be shared or used by more than one Authorized User, but any Authorized User login may be permanently reassigned to another Authorized User as needed. Customer is responsible for the confidentiality and use of Authorized User's account names, passwords, dual authentications and any other computer access controls. Customer is also responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within e-mails or otherwise entered electronically through the Service or under Customer's account. Customer shall terminate an Authorized User's access to the Service immediately if such Authorized User loses access privileges for any reason,

including, without limitation, termination of employment or engagement with Customer, a change in job responsibilities that no longer requires access to the Service, and/or the Authorized User's violation of this Agreement. Spök will act as though any Electronic Communications it receives under Customer's or its Authorized User's passwords, username, and/or account number have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Service and shall promptly notify Spök of any unauthorized access or use of the Service and any loss, theft, or unauthorized use of any Authorized User's password or usernames and/or Service account numbers within three (3) days or sooner if required by applicable law. To the extent such unauthorized access or use involves Personal Data subject to HIPAA, Customer shall provide notice to Spök in accordance with the relevant terms of the BAA.

**5.3. Transmission of Data.** Customer understands that the processing and transmission of Customer's Electronic Communications is necessary to the use and provision of the Service. Customer is responsible for securing a high-speed Internet connection and compatible, up-to-date "browser" software in order to utilize the Service. Customer expressly consents to Spök's interception and storage of Electronic Communications and/or Customer Data, Customer acknowledges and understands that processing of Customer's Electronic Communications through the Service will involve transmission over the Internet and over various networks, only part of which may be owned and/or operated by Spök. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, between network communications facilities, over the telephone or through other electronic means and Spök cannot guarantee the confidentiality, integrity, or availability of such transmissions. Spök is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission or storage of any data whatsoever across networks or on devices not owned and/or operated by Spök, including, but not limited to, the Internet and Customer's local network and Equipment. Customer expressly permits access to any content Customer creates or transmits through the Service to Spök and to any administrator to whom Customer grants or to whom administrative rights are automatically granted over Customer's usage of the Software. Customer is responsible for ensuring that it has all of the necessary rights in any Customer Data as may be required in relation to the Service and that all Customer Data so processed does not infringe any third party's intellectual property or privacy rights, violate any applicable laws or violate the terms of any license or agreement.

#### **5.4. Personal Data.**

**(a)** Customer hereby acknowledges and agrees that Spök's performance of its obligation under this Agreement may require Spök to access, process, transmit and/or store Customer Personal Data or the Personal Data of Customer's clients, patients, employees and Affiliates. By submitting Personal Data to Spök, Customer agrees that Spök and its Affiliates may collect, process, transmit and/or store Personal Data only to the extent necessary for, and for the sole purpose of, enabling Spök to perform its obligations to under this Agreement, and will not collect, retain, use, sell, or otherwise disclose the Personal Data for any purpose other than performing the services specified in the Agreement or as otherwise required by law. Customer agrees to obtain all necessary authorizations or consents and make all necessary disclosures before processing Personal Data using the Service.

**(b)** Prior to Spök's provision of the Service to Customer, Customer shall notify Spök, in writing, of any Personal Data that is subject to specific data protection obligations, including, but not limited to, any obligations that apply to Spök pursuant to a contract between Customer and a third party, and if an amendment or addendum to this Agreement may be necessary to comply therewith. To the extent such an amendment or addendum is necessary, Spök and Customer agree to negotiate such document in good faith. If Spök and Customer cannot agree upon the terms of such document, Spök may terminate this Agreement upon thirty (30) days' written notice. To the extent the Service requires Spök to engage in activities that involve Personal Data subject to HIPAA, Customer and Spök agree to abide by the BAA as provide for as referenced in this Agreement.

**(c)** Customer further agrees to obtain all necessary authorizations or consent, and make all necessary disclosures, before the use, disclosure or processing of Personal Data using the Service. Customer acknowledges and agrees

that it is solely responsible for determining the purposes and means by which Spök is to fulfill its obligations related to Personal Data and providing the Service to Customer under this Agreement, and represents, warrants, and covenants that such purposes and means are, and will be, in compliance with this Agreement and Customer's instructions, and will not Spök in noncompliance and/or breach of any applicable data protection or other laws.

**5.5 Ownership of Data.** Any Customer Data provided to Spök shall remain the property of the Customer. To enable Spök to provide Customer with the Service as subscribed to, Customer hereby grants to Spök a non-exclusive right to use, copy, distribute and display Customer Data solely in connection with Spök's provision of the Service to Customer under the terms of this Agreement. Customer represents, warrants, and covenants that Customer has all rights to the Customer Data necessary to make the Customer Data available to Spök for the purposes provided for in this Agreement. Customer, not Spök, shall have sole responsibility for the Legality, content, completeness, accuracy, currency, integrity, and reliability of Customer Data and Spök will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data.

**5.6 Aggregated Statistics.** Spök may, but is under no obligation to, monitor Customer's use of the Service and collect and analyze data and other information relating to the provision, use and performance of various aspects of the Service and related system and technologies (including, without limitation, information concerning Customer Data and data derived therefrom) (collectively, "Usage Data"). Spök will be free to use any Usage Data to improve and enhance the services and for other development, diagnostic and corrective purposes in connection with the services and other Company offerings and disclose Usage Data solely in an aggregated and de-identified form.

**5.7. Spök's Support Services and Professional Services.** As part of the Service, Spök will provide assistance to Customer in its use of the Service. Spök also offers optional consulting services for an additional fee which may be requested by Customer and added to the Order Form for the Service.

**5.8. Data Security.** Spök shall maintain commercially reasonable administrative, physical and technical safeguards designed to protect the security, confidentiality, and integrity of Customer Data. If Spök becomes aware of any accidental or unlawful destruction, loss, alteration, unauthorized acquisition or disclosure of, or unauthorized access to, Customer Data ("Security Incident"), Spök will take reasonable steps to notify Customer without undue delay and in compliance with applicable laws. Spök will also reasonably cooperate with Customer, at Customer's expense, with respect to any investigations relating to a Security Incident, including the preparation of any required notices in relation to a Security Incident, as may be necessary or required under applicable laws. Spök will provide information reasonably requested by Customer in relation to any Security Incident, where such information is not already available to Customer through Customer account(s), the Service, or through updates Spök has provided. During the Term, Spök shall ensure performance of an annual third-party audit in accordance with the Statement on Standards for Attestation Engagements No. 16 (SSAE 16) and the International Standards for Assurance Engagements No. 3402 (ISAE 3402) and shall obtain a SSAE 16 (SOC 1) / ISAE 3402 Type II Report. Additionally, Spök shall perform an annual SOC 2 (or similar security standard. No more than once per year, Customer may submit one request for a copy of: (a) Spök's most recent final SSAE 16 (SOC 1) / ISAE 3402 Type II Report and (b) Spök's SOC2 certificate.

**5.9. Modifications; Discontinuation of Service.** Spök may make modifications to the Service or particular components of the Service from time to time; provided, however, that Spök shall notify Customer prior to making any modification that materially reduces the functionality of the Service. Spök reserves the right to discontinue offering any Service at the conclusion of the then current subscription term for such Service unless Spök elects to terminate the Agreement with or without cause as outlined in Section 6.4. Spök shall not be liable to Customer nor to any third party for any modification of the Service as described in this Section.

## **6. Suspension/Termination.**

**6.1. Suspension for Delinquent Account.** Spök reserves the right to suspend Customer's access to and/or use of the Service and/or Support Services if any payment is due but unpaid but only after Spök has provided Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice. Customer agrees that Spök shall not be liable to Customer or to any Customer Affiliate or other third party for any suspension of the Service pursuant to this Section.

**6.2. Suspension for Extraordinary Events.** Spök may with reasonably contemporaneous telephonic notice to Customer suspend access to the Service if Spök reasonably determines that(a) there is a threat or attack on any the Service; (b) Customer's or any Authorized User's use of the Service disrupts or poses a security risk to the Service or any person; (c) Customer or any Authorized User is using the Service for fraudulent or illegal activities; or (d) Spök's provision of the Service to Customer or any Authorized User is prohibited by applicable law.

**6.3. Restoration of Service.** Spök shall use commercially reasonable efforts to provide written notice of any Service suspension to Customer and to provide updates regarding resumption of access to the Service following any suspension. Spök shall use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to suspension is cured. Spök shall have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a suspension under Sections 6.1 or 6.2.

**6.4. Termination for Cause.** Either party may immediately terminate this Agreement and all Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the non-breaching party. Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach.

**6.5. Effect of Termination.** Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service. If this Agreement is terminated by Customer for any reason other than a termination expressly permitted by this Agreement, then Spök shall be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of Spök's breach of this Agreement, then Customer shall be entitled to a refund of the pro rata portion of any fees paid by Customer to Spök under this Agreement for the terminated portion of the Term.

**6.6. Handling of Customer Data Upon Termination/Expiration.** Following expiration or termination of the Agreement or a Customer account, if applicable, Spök may immediately deactivate the applicable Customer account(s) and shall be entitled to delete such Customer account(s) from Spök's "live" site following a forty (40) day period. Customer further agrees that Spök shall not be liable to Customer nor to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that Spök is in compliance with the terms of this Section.

**6.7. Survival.** This Section 6.7 and Sections 3, 4, 5.5, 5.6, 6.4, 6.7, 7, 8.3, 9, 10, 11, 12, 13, and 14 shall survive the termination and/or expiration of this Agreement.

**7. Confidentiality.** From time to time during the Term, either party may disclose or make available to the other party Confidential Information. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's Affiliates and it and their employees, contractors and service providers who have a need for such Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder and such individuals and entities are bound by confidentiality obligations at least as restrictive as those under this Agreement. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure

pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. On the expiration or termination of this Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law; and provided further, with respect to any Confidential Information that is Personal Data, such obligations of non-disclosure will survive the termination or expiration of this Agreement as long as required under applicable law and, if applicable, in accordance with the BAA.

## **8. Warranties.**

**8.1. Warranty of Functionality.** Spök warrants that: (i) the Service will achieve in all material respects the functionality procured by the Customer, and (ii) such functionality of the Service will not be materially decreased during the then-current subscription term. Customer's sole and exclusive remedy for Spök's breach of this warranty shall be that Spök shall use commercially reasonable efforts to modify the Service to achieve in all material respects the functionality described in the applicable Documentation. If Spök is unable to restore such functionality, Customer shall be entitled to terminate the Agreement and receive a pro-rata refund of the subscription fees paid under the Agreement for its use of the Service for the terminated portion of the then-current subscription term. Spök shall have no obligation with respect to a warranty claim unless Customer delivers to Spök a notice of such claim containing sufficient detail to allow Spök to recreate the issue within sixty (60) days of the first instance of any material functionality problem. The warranties set forth in this Section 8.1 are made to and for the benefit of Customer only. Such warranties shall only apply if the applicable Service has been utilized in accordance with the Documentation, this Agreement and applicable law. This Section 8.1 provides Customer's sole and exclusive remedy for any breach by Spök of the warranties provided in this Section 8.1.

**8.2. Warranty of No Malicious Code.** Each party warrants that it will not knowingly introduce any viruses, Trojan horses, worms, spyware, or other such malicious code ("**Malicious Code**") into the Service, and that it shall take commercially reasonable measures to prevent such occurrences.

**8.3. Disclaimer of Warranties.** THE LIMITED WARRANTIES IN THIS SECTION ARE MADE TO CUSTOMER EXCLUSIVELY AND ARE IN LIEU OF ALL OTHER WARRANTIES. SPÖK MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, DOCUMENTATION, SUPPORT, AND SERVICES, IN WHOLE OR IN PART, OR ANY OTHER MATTER UNDER THIS AGREEMENT. SPÖK EXPLICITLY DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, ACCURACY, SYSTEM INTEGRATION AND OF FITNESS FOR A PARTICULAR PURPOSE. SPÖK EXPRESSLY DOES NOT WARRANT THAT THE SOFTWARE, IN WHOLE OR IN PART, WILL BE ERROR FREE. FURTHER, SPÖK EXPRESSLY DOES NOT WARRANT THAT PRODUCTS OR ANY SUPPORT WILL BE USABLE BY CUSTOMER IF THE PRODUCT HAS BEEN MODIFIED BY ANYONE OTHER THAN SPÖK, OR WILL OPERATE WITHOUT INTERRUPTION, OR WILL BE COMPATIBLE WITH ANY SOFTWARE OTHER THAN IDENTIFIED IN THE DOCUMENTATION. SPÖK DOES NOT WARRANT THAT THE SOFTWARE, SUPPORT OR SERVICES ARE FREE OF NONMATERIAL DEFECTS OR THAT THEY WILL MEET THE SPECIFIC REQUIREMENTS OR NEEDS OF CUSTOMER'S BUSINESS.

## **9. Limitations of Liability.**



**9.1. Exclusion of Consequential Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE, LOST BUSINESS, LOSS OF GOODWILL OR REPUTATION, LOSS OF DATA, OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE SUCH DAMAGES SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 9.2 BELOW.

**9.2. Limitations on Liability.** THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY LICENSE, USE OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE, SHALL BE AN AMOUNT EQUAL TO THE EQUIVALENT OF TWELVE (12) MONTHS OF SUBSCRIPTION FEES APPLICABLE AT THE TIME OF THE EVENT. NOTWITHSTANDING THE PREVIOUS SENTENCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY TO THE EXTENT SUCH LIABILITY WOULD NOT HAVE OCCURRED BUT FOR THE OTHER PARTY'S GROSS NEGLIGENCE, WILLFULL MISCONDUCT, OR FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

**9.2. Acknowledgement; Exceptions.** BOTH PARTIES ACKNOWLEDGE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON THEIR LIABILITY. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 9.1 SHALL NOT APPLY TO: (A) FEES DUE UNDER THIS AGREEMENT; (B) A BREACH OF SECTION 3 OF THIS AGREEMENT; (C) EITHER PARTY'S INDEMNITY OBLIGATIONS EXCEPT AS SET FORTH IN SECTION 10 BELOW; OR (D) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFULL MISCONDUCT. CERTAIN STATES AND/OR JURISDICTIONS MAY NOT ALLOW A LIMITATION ON DAMAGES CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SO THE LIMITATIONS ABOVE MAY NOT APPLY TO THE PARTIES UNDER THOSE CIRCUMSTANCES.

## **10. Indemnification.**

**10.1. Infringement.** Subject to the terms and conditions set forth in this Section , Spōk shall, at its own expense, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "**Claims**") alleging that the Service, as used in accordance with this Agreement, infringes such third party's copyrights, patents or trademarks, or misappropriates such third party's trade secrets and shall indemnify Customer from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "**Losses**") to the extent based upon such a Claim.

Spōk will have no liability for Claims to the extent arising from (a) use of the Service in violation of this Agreement or applicable law, (b) use of the Service after Spōk notifies Customer to discontinue use because of an infringement claim, (c) modifications to the Service not made by Spōk or made by Spōk based on Customer specifications or requirements, (d) to the extent arising from use of the Service in combination with any non-Spōk software, application or service, or (e) services offered by Customer or revenue earned by Customer for such services.

If a Claim of infringement as set forth above is brought or threatened, Spōk shall, at its sole option and expense, use commercially reasonable efforts either (a) to obtain the right for Customer to continue use of the Service; (b) to modify or replace all or portions of the Service as needed to avoid infringement, providing that the functionality of the Service will not be materially reduced; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the subscription fees paid for under the Agreement

for the terminated portion of the Term. The rights and remedies granted Customer under this Section 10.1 state Spök's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

**10.2 Customer's Indemnity.** Subject to the terms and conditions set forth in this Section, Customer shall, at its own expense, defend Spök from and against any and all Claims (i) alleging that the Customer Data or any trademarks or service marks, or any use thereof, infringes the intellectual property or privacy rights of a third party, or has caused harm to a third party, (ii) arising out of Customer's breach of Section 3 and/or Section 5; and/or (iii) arising out of or relating to Spök's processing of Customer Data in compliance with this Agreement; and shall indemnify Spök from and against liability for any Losses to the extent based upon such Claims.

**10.3 Indemnification Procedures and Survival.** In the event of a potential indemnity obligation under this Section, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section 10 are expressly conditioned upon the indemnified party's compliance with this Section 10.3 except that failure to notify the indemnifying party of such Claim shall only relieve the indemnifying party of its obligations under this Section 10 to the extent that the indemnifying party is materially prejudiced by such failure.

**11. Dispute Resolution.** Each party agrees that before it seeks any form of legal relief it shall provide written notice to the other of the specific issues in dispute (and referencing the specific portions of any contract between the parties and which are allegedly being breached). Within thirty (30) days after such notice knowledgeable executives of the parties shall hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith to resolve the dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this Section 11 shall not apply prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.

**12. Publicity.** Subject to Section 7, either party may publicize Customer's use of the Service with the prior written consent of the other party, which may not be unreasonably withheld.

**13. Spök IP.** Spök shall retain all right, title and interest (including copyrights, patents, service marks, trademarks and other intellectual property rights) in and to the Spök IP, and any and all updates, enhancements, customizations, revisions, modifications, future releases and any other changes relating to the Spök IP. Except for the limited access and use rights granted pursuant to this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Spök IP.

#### **14. General Provisions.**

**14.1. Entire Agreement.** This Agreement, together with any other documents, attachments, exhibits, or addenda incorporated herein by reference constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, the BAA, if

applicable; (ii) second, this Agreement, excluding its exhibits; (iii) third, the exhibits to this Agreement other than the BAA as of the Effective Date; and (iv) fourth, any other documents incorporated herein by reference.

**14.2. Notices.** Customer’s email address for communication and notice purposes relating to this Agreement is \_\_\_\_\_ (or subsequent email addresses as advised by Customer). Customer agrees to accept emails from Spōk at the above e-mail address specified under this Section. Spōk may provide any and all general notices, statements, and other communications in English to Customer through either e-mail, telephonic means, or by mail or express delivery service. In addition, Spōk may rely and act on all information, authorizations and instructions provided to Spōk from the above-specified e-mail address and Customer administrators. Customer is responsible at all times to ensure address provided is correct and accurate.

Any notice required in writing shall be sent to the party at its address shown below or at the address listed in the heading of this Agreement:

**SPŌK, INC** \_\_\_\_\_

Spōk, Inc.  
Attn: Legal Affairs  
5911 Kingstowne Village Parkway, 6<sup>th</sup> fl  
Alexandria VA 22315

**(CUSTOMER)** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**14.3. Force Majeure.** If and to the extent that a Party’s (an “Affected Party”) performance of any of its obligations pursuant to the Agreement is prevented, hindered or delayed by flood, earthquake, acts of terrorism, acts of war, national emergency, insurrection, elements of nature or acts of God (excluding for the avoidance of doubt labor strike disputes or strikes) (each a “Force Majeure Event”), and such nonperformance, hindrance or delay could not have been foreseen or prevented by reasonable precautions, then the Affected Party shall be excused for such hindrance, delay or nonperformance, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and the Affected Party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent reasonably possible without delay, including through the use of alternate sources, workaround plans or other means; provided however, that the use of such alternate sources, workaround plans or other means shall cease upon the cessation of the Force Majeure Event. The occurrence of a Force Majeure Event does not excuse, limit or otherwise affect Spōk’s obligation to implement the Business Continuity Procedures and restore the Services in accordance therewith.

Both parties acknowledge and agree that the virus known as COVID-19 (including variations thereof and the associated impact) is a foreseeable event and (a) does not and shall not in any way excuse performance by either party with respect to the Services or other obligations under the Agreement, and (b) is not and shall not be considered a Force Majeure Event for the purposes of this Agreement.

**14.4. Amendment and Modification; Waiver.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**14.5. Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**14.6. Governing Law; Submission to Jurisdiction.** This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Delaware in each case located in the State of Delaware, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

**14.7. Assignment.** Neither party may assign this Agreement without prior written consent of the other party, except that (i) Spök may assign without consent to an Affiliate or the successor of all or substantially all of Spök's business or assets to which this Agreement relates; and (ii) Customer may assign without consent to an Affiliate or the successor of all or substantially all of the Customer's business or assets to which this Agreement relates on condition that before Customer assigns this Agreement, all of Customer's payments to Spök are current and Customer gives Spök written notice of assignment. Any purported assignment in violation of this section will be null and void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

**14.8. U.S. Government Rights.** Each of the Documentation and the software components that constitute the Service is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Service and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

**14.9. Equitable Relief.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 7 or, in the case of Customer, Section 3, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

**14.10. Non-solicitation.** Subject to applicable law, Customer agrees during the Term and for one year after termination or expiration of this Agreement, Customer shall not, and shall not assist any other person to, directly or indirectly recruit or solicit for employment or engagement as an independent contractor any employee or contractor of Spök who has provided services to Customer. In the event of a violation of this Section 14.10, Spök will be entitled to liquidated damages equal to the two times each hired employee's or contractor's most recent annual compensation.

**14.11. Requests for Records.** Customer shall reimburse Spök for any costs it incurs in responding to any request from a third party for records or information relating to Customer's account(s) or an Authorized User's use of the Service, subject to any limitations imposed by applicable laws. Such requests can include a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the Authorized User permitting the disclosure.

**14.12. Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.