

## ALTSMARK.com Terms of Use

Last Revised: March 1, 2021

**Welcome to ALTSMARK.com's Terms of Use!** We are genuinely excited to have you aboard.

Thank you for choosing to use our services.

Below are important legal terms that apply to anyone who visits the ALTSMARK website or uses ALTSMARK's services. These terms are necessary to protect both you and ALTSMARK (the "Company"), and to make our services possible and more enjoyable for everyone. ALTSMARK offers a wide range of services and features and part of the terms below may not be relevant to the specific services you use. For purposes of this document, terms such as we, us, our and similar pronouns, in the singular or plural, refer exclusively to the Company and not to any individual or affiliate of the Company. Terms such as you, user, subscriber, buyer, and similar references, in the singular or plural, refer to existing and prospective Users of the Company's services.

We understand that legal terms can be exhausting to read, and we've tried to make the experience more pleasant. If you have any suggestions on how we can improve them, you are more than welcome to contact us at [support@ALTSMARK.com](mailto:support@ALTSMARK.com).

### 1. Introduction

#### 1.1. Our Purpose

Our services offer our users the ability to easily manage their Private Capital Markets portfolio(s) on behalf of themselves and their clients creating highly functional data and reports to help manage and promote your business, content, and investment ideas. Our platform is designed to offer advisors, their clients, and individual investors, overall, a seamless experience managing their assets generally unsupported by other platforms without being tech-savvy. As detailed below, we offer our users numerous tools and features to manage, review, create and publish tailored investor reports. The online and mobile instance we create for Users are collectively referred to herein as ("User Platform(s)").

#### 1.2. Legal Agreement

These ALTSMARK.com Terms of Use ("Terms of Use"), together with such additional terms which specifically apply to some of our services and features as presented on the ALTSMARK.com website(s) ("ALTSMARK Website", and collectively - the "ALTSMARK Terms"), set forth the terms and conditions applicable to each visitor or user ("User" or "you") of the ALTSMARK Website, the ALTSMARK application ("PortfolioCentriX", "PCX"), the ALTSMARK data service ("DataCentriX", "DCX") and/or any other services, applications and features offered by us with respect thereto, except where we explicitly

state otherwise (all services offered through the ALTSMARK Website or the ALTSMARK App, collectively – the “ALTSMARK Services” or “Services”).

The ALTSMARK Terms constitute a binding and enforceable legal contract between ALTSMARK.com Ltd. and its affiliated companies and subsidiaries worldwide (“ALTSMARK”, “us” or “we”) and “You” (“you”, “subscriber”, “buyer”) in relation to the use of any ALTSMARK Services - so please read them carefully.

You may visit and/or use the ALTSMARK Services and/or the ALTSMARK applications only if you fully agree to the ALTSMARK Terms. By using and/or registering for any of the ALTSMARK Services, you signify and affirm your informed consent to these Terms of Use and any other ALTSMARK Terms applicable to your use of any ALTSMARK Services. If you do not read, fully understand, and agree to the ALTSMARK Terms, you must immediately leave the ALTSMARK Website and avoid or discontinue all use of the ALTSMARK Services. Evidence of your use of our User Platform(s) shall represent your consent to the terms and conditions contained in this Terms of Use.

By using our Services, you acknowledge that you have read our Privacy Policy available at <https://www.ALTSMARK.com/privacy-policy> (“Privacy Policy”).

## 2. PURCHASED SERVICES

- 2.1. **Provision of Purchased Services.** We shall make the Purchased Services available to You pursuant to this Agreement upon Your completion of our Subscription Form which shall identify the services available to You. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.
- 2.2. **User Subscriptions.** Unless otherwise specified in Your Subscription Form, (i) Services are purchased as User subscriptions and may be accessed only by the specified User(s) on the Subscription Form, (ii) additional User subscriptions may be added during the subscription term by updating the original Subscription Form or completing a new Subscription Form that specifically identifies the additional User(s), at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

## 3. USE OF THE SERVICES

- 3.1. **Our Responsibilities.** We shall: (i) provide to You basic support for the Purchased Services at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a

day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice via the Purchased Services and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Eastern Standard time Friday to 3:00 a.m. Eastern Standard time Monday), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), or Internet service provider failures or delays, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

- 3.2. **Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement and the Subscription Form, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Purchased Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Purchased Services only in accordance with the User Guide and applicable laws and government regulations. You shall not (a) make the Purchased Services available to anyone other than Users, (b) sell, resell, rent or lease the Purchased Services, (c) use the Purchased Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Purchased Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Purchased Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Purchased Services or their related systems or networks.

#### 4. FEES AND PAYMENT FOR PURCHASED SERVICES

- 4.1. **User Fees.** You shall pay all fees specified in the Subscription Form. Except as otherwise specified herein or in the Subscription Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated in the Subscription Form. User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period may be charged for that full monthly period.
- 4.2. **Invoicing.** ALTSMARK and/or its affiliated companies will issue an invoice or credit memo for any payment of Fees or refund made to or by ALTSMARK ("Invoice"). Each Invoice will be issued in electronic form and based on the country stated in your billing address and will be made available to you via your User Account and/or by e-mail. For issuing the Invoice, you may be required to furnish certain Personal Information (as such term is defined in the Privacy Policy) to comply with local laws. Please note that the Invoice presented in your User Account may be inadequate with your local law requirements, and in such case may be used for pro forma purposes only.
- 4.3. **Payment.** You will provide and maintain with Us valid and updated credit card information, or with alternative payment means as specified in the Subscription Form, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services listed in the Subscription Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 10.2 (Term of Purchased User Subscriptions). Such charges shall be made in advance, monthly, annually or in accordance with any different billing frequency stated in the applicable Subscription Form. If the Subscription Form specifies that payment will be by a method other than a credit

card, We will invoice You in advance and otherwise in accordance with the payment terms contained in the Subscription Form. Unless otherwise stated in the Subscription Form, invoiced charges are due on the payment date reflected on the invoice date. You are responsible for maintaining complete and accurate billing and contact information with Us.

- 4.4. **Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 2.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Subscription Form on payment terms requiring payment in advance or periods shorter than those specified in Section 4.2 (Invoicing and Payment).
- 4.5. **Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full.
- 4.6. **Payment Disputes.** We shall not exercise Our rights under Section 6.4 (Overdue Charges) or 6.5 (Suspension of Service and Acceleration) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.
- 4.7. **Chargebacks.** If, at any time, we record a decline, chargeback, or other rejection of a charge of any payable Fees on your ALTSMARK account (“Chargeback”), this will be considered as a breach of your payment obligations hereunder, and your use of the ALTSMARK Services may be automatically disabled or terminated. In the event a Chargeback is performed, your User Account may be blocked without the option to re-purchase or re-use it, and any data contained in such User Account, including any domains, applications and Third-Party Services may be subject to cancellation and Capacity Loss (as defined in Section 7.3 below). Your use of the ALTSMARK Purchased Services will not resume until you re-subscribe for any such ALTSMARK Purchased Services, and pay any applicable Fees in full, including any fees and expenses incurred by ALTSMARK and/or any Third-Party Services for each Chargeback received (including Fees for ALTSMARK Services provided prior to the Chargeback, handling and processing charges and fees incurred by the payment processor). If you have any questions or concerns regarding a payment made to ALTSMARK, we encourage you to first contact our Customer Support team before filing a Chargeback or reversal of payment, in order to prevent the ALTSMARK Services from being cancelled and your User Account being blocked, and to avoid the filing of an unwarranted or erroneous Chargeback, which may result in your being liable for its applicable Fees, in addition to re-payment of all the Fees applicable to the ALTSMARK Services purchased (and charged-back) by you. We reserve our right to dispute any Chargeback received, including by providing the relevant credit card company or financial institution with any information and documentation proving that the User responsible for such Chargeback did in fact authorize the transaction and make use of the services rendered thereafter.
- 4.8. **Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal, or foreign jurisdiction (collectively, “**Taxes**”). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to, and paid by, You unless You provide Us with a valid tax exemption certificate authorized

by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property, and employees.

## 5. PROPRIETARY RIGHTS

- 5.1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title, and interest in and to the Purchased Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.
- 5.2. **Restrictions.** You shall not (i) permit any third party to access the Purchased Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Purchased Services, (iii) copy, frame or mirror any part or content of the Purchased Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Purchased Services, or (v) access the Purchased Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Purchased Services.
- 5.3. **Ownership of Your Data. AS BETWEEN US AND YOU, YOU EXCLUSIVELY OWN ALL RIGHTS, TITLE, AND INTEREST IN AND TO ALL OF YOUR DATA.**

AS BETWEEN ALTSMARK AND YOU, YOU SHALL OWN ALL INTELLECTUAL PROPERTY PERTAINING TO YOUR USER CONTENT AND TO ANY OTHER MATERIALS CREATED BY YOU, INCLUDING TO ANY CLIENT INFORMATION, ACCOUNT DATA, DOCUMENT OR FILES OF ANY TYPE UPLOADED, IMAGES, CODE, INTERFACES, TEXT AND LITERARY WORKS THAT YOU CREATE TO FACILITATE INTERNAL INTEGRATION OF ALTSMARK OR THE PURCHASED SERVICES. ALTSMARK DOES NOT CLAIM OWNERSHIP RIGHTS ON YOUR CONTENT. FOR THE SOLE PURPOSE OF GRANTING YOU THE PURCHASED SERVICES, YOU KNOW AND AGREE THAT WE WILL NEED TO ACCESS, UPLOAD AND/OR COPY YOUR USER CONTENT TO OUR PLATFORM, INCLUDING CLOUD SERVICES AND CDN'S, TO MAKE DISPLAY ADJUSTMENTS, TO DUPLICATE FOR BACKUP AND PERFORM ANY OTHER TECHNICAL ACTIONS AND/OR USES REQUIRED TO PERFORM OUR PURCHASED SERVICES, AS WE DEEM FIT.

- 5.4. **Feedback & Suggestions.** If you provide us with any suggestions, comments or other feedback relating to the ALTSMARK Purchased Services (whether existing, suggested or contemplated), which is or may be subject to any Intellectual Property rights ("Feedback"), such Feedback shall be exclusively owned by ALTSMARK. By providing such Feedback to ALTSMARK, you acknowledge and agree that it may be used by ALTSMARK in order to: (i) further develop, customize and improve the ALTSMARK Purchased Services, (ii) provide ongoing assistance and technical support, (iii) contact you with general or personalized ALTSMARK related notices and/or interview requests based on your feedback or otherwise, (iv) facilitate, sponsor and offer certain promotions, and monitor performance, (v) to create aggregated statistical data and other aggregated and/or inferred information, which ALTSMARK may use to provide and improve its Purchased Services, (vi) to enhance ALTSMARK data security and fraud prevention capabilities, and (vii) to comply with any applicable laws and regulations. In addition, you (1) represent and warrant that such Feedback is accurate, complete, and does not infringe on any third-party rights; (2) irrevocably assign to ALTSMARK any right, title and interest you may have in such Feedback and (3) explicitly and irrevocably waive any and all claims relating to any past, present or future moral rights, artists' rights, or any other similar rights worldwide in or to such Feedback.

## 6. CONFIDENTIALITY

- 6.1. **Definition of Confidential Information.** As used herein, " **Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and the Subscription Form, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 6.2. **Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and the Subscription Form , and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and the Subscription Form who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.
- 6.3. **Protection of Your Data.** Without limiting the above, We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 8.4 below, (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters.
- 6.4. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 7. WARRANTIES AND DISCLAIMERS

- 7.1. **Our Warranties.** We warrant that (i) the Purchased Services shall perform materially in accordance with all technical and functional manuals (as amended from time to time) and the functionality of the Purchased Service will not be materially decreased during a subscription term. For any breach of either such warranty, Your exclusive remedy shall be as provided in Section 12.4 (Termination for Cause) and Section 12.5 (Refund or Payment upon Termination) below.
- 7.2. **Your Warranties:** You represent and warrant that: (a) that You will use the Purchased Services solely for internal purposes and will not redistribute any information or Data

produced by the Purchased Services in any form or manner to any third party, except in the case of the account holder(s) or duly designated representatives of the account holder(s). For purpose of clarity an account holder(s) is defined as the legal owners, trustee or otherwise duly authorized signatory of the account you may load on Our systems or designate ALTSMARK to provided data processing services for.

- 7.3. **Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement,
- 7.4. **No Investment Advice:** YOU ACKNOWLEDGE AND AGREE THAT THE PURCHASED SERVICES, AND ALL CONTENT MADE AVAILABLE ON OR THROUGH THE PURCHASED SERVICES, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. UNDER NO CIRCUMSTANCES SHOULD THE PURCHASED SERVICES OR ANY SUCH CONTENT BE USED OR CONSIDERED AS: (A) AN OFFER TO SELL OR A SOLICITATION OF ANY OFFER TO BUY ANY SECURITY OR OTHER INSTRUMENT; OR (B) ADVICE REGARDING THE QUALITY OR SUITABILITY OF ANY INVESTMENT OR INVESTMENT MANAGER. THE CONTENT MADE AVAILABLE ON OR THROUGH THE PURCHASED SERVICES HAS BEEN OBTAINED FROM VARIOUS SOURCES; NEITHER ALTSMARK NOR ITS LICENSORS REPRESENT OR WARRANT THAT ANY SUCH CONTENT IS ACCURATE OR COMPLETE, AND IT SHOULD NOT BE RELIED UPON AS SUCH. OPINIONS EXPRESSED IN ANY SUCH CONTENT ARE SUBJECT TO CHANGE WITHOUT NOTICE. ALTSMARK AND ITS LICENSORS: (I) MAKE NO REPRESENTATION OR WARRANTY IN REGARD TO ANY INVESTMENT DECISIONS, ADVICE, TREATMENT, OR SERVICES MADE AVAILABLE ON OR THROUGH THE PURCHASED SERVICES; AND (II) WILL NOT HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY INVESTMENT DECISION BASED UPON, OR THE RESULTS OBTAINED FROM, THE CONTENT MADE AVAILABLE ON OR THROUGH THE PURCHASED SERVICES.
- 7.5. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 8. MUTUAL INDEMNIFICATION

- 8.1. **Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding (" **Claim**") made or brought against You by a third party alleging that the use of the Purchased Services, as permitted hereunder, infringes or misappropriates the intellectual property rights of a third party, and shall indemnify You for any damages finally awarded against, and for reasonable attorney's fees incurred by You in connection with any such Claim; provided, that You (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense.
- 8.2. **Indemnification by You.** You shall defend Us against any Claim made or brought against Us by a third party alleging that Your Data, or Your use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify Us for any damages finally awarded against, and for reasonable attorney's fees incurred by Us in connection with any such Claim; provided, that We (a) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally release Us of all liability); and (c) provide to You all reasonable assistance, at Our expense.

8.3. **Exclusive Remedy.** This Section 10 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

## 9. LIMITATION OF LIABILITY

9.1. **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$500,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).

10. **Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 11. TERM AND TERMINATION

11.1. **Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.

11.2. **Term of Purchased User Subscriptions.** User subscriptions purchased by You commence on the start date specified in the applicable Subscription Form and continue for 30-days or the term of the fiscal month in which Service commenced, whichever comes first. Except as otherwise specified in the applicable Subscription Form, all User subscriptions shall automatically renew for additional 30-day periods, unless either party gives the other notice of non-renewal at least 5 days before the end of the relevant subscription term.

11.3. **Subscription Auto-Renewals.** In order to ensure that you do not experience any interruption or loss of services, certain Purchased Services include an automatic renewal option by default, according to which, unless you turn-off the auto-renewal option, such Purchased Services will automatically renew upon the end of the applicable subscription period, for a renewal period equal in time to the original subscription period (excluding extended periods) and, unless otherwise notified to you, at the same price (subject to applicable Taxes changes and excluding any discount or other promotional offer provided for the first period) ("Renewing Purchased Services"). For example, if the original subscription period for a Purchased Service is one month, each of its renewal periods (where applicable) will be for one month. Accordingly, where applicable, ALTSMARK will attempt to automatically charge you the applicable Fees using the payment information provided in the Subscription Form, within up-to two (2) weeks before such renewal period commences. In the event of failure to collect the Fees owed by you, we may in our sole discretion (but shall not be obligated to) retry to collect at a later time, and/or suspend or cancel your User Account, without further notice. If Your Renewing Purchased Service is subject to a yearly or multiple-year subscription period, ALTSMARK will endeavor to provide you a notice prior to the renewal of such Purchased Service at least thirty (30) days in advance of the renewal date. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter. By entering into this Agreement and by purchasing a Renewing Purchased Service, you acknowledge and

agree that the Renewing Purchased Service shall automatically renew in accordance with the above terms. You may turn-off the auto-renewal option for Renewing Purchased Service at any time via your User Account or by visiting ALTSMARK Help Center.

- 11.4. **Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.5. **Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Subscription Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 11.6. **Return of Your Data.** Upon request by You made within 15 days after the effective date of termination of the Purchased Services, We will make available to You for download a file of Your Data in either comma separated value (.csv), tab delimited (.txt) or Microsoft® Excel (.xls) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.
- 11.7. **Surviving Provisions.** Section 6 (Fees and Payment for Purchased Services), 7 (Proprietary Rights), 8 (Confidentiality), 9.4 (No Investment Advice), 9.5(Disclaimer), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.6 (Return of Your Data), 13 (Notices, Governing Law and Jurisdiction) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

## 12. NOTICES, GOVERNING LAW AND JURISDICTION

- 12.1. **Choice of Law:** With respect to all parties either domestic or foreign, this Agreement shall be governed by Vermont law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Purchased Service.
- 12.2. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions, and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Notices to You shall be addressed to the System Administrator designated by You for Your relevant Purchased Services account as reflected in the Subscription Form, and in the case of billing-related notices, to the relevant Billing Contact designated by You in the Subscription Form.
- 12.3. **Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice, or conflicts, of law, and to the exclusive jurisdiction of the applicable courts above.
- 12.4. **Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

### 13. GENERAL PROVISIONS

- 13.1. **Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Purchased Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Purchased Services in violation of any U.S. export embargo, prohibition, or restriction.
- 13.2. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.
- 13.3. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 13.4. **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 13.5. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 13.6. **Attorney Fees.** You shall pay on demand all Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 6.2 (Invoicing) and Section 6.3 (Payment).
- 13.7. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Subscription Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 13.8. **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Subscription Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Subscription Form, the terms of such exhibit, addendum or Subscription Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Subscription Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.