

MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) applies to and is incorporated by reference into the ordering document (the “Quote”) is made by and between the Service Provider (as identified on the Quote) and the Customer (as identified on the Quote). MyAlerts and Customer shall collectively be referred to herein as the “**Parties**” and individually as a “**Party**.” This Agreement sets forth the terms and conditions under which Service Provider will provide the Customer with access to certain applications set forth in the applicable Quote (“**Application(s)**”), user documentation that Service Provider makes generally available in hard copy or electronic form to its general customer base in conjunction with the licensing of such Applications (“**Documentation**”), and deliverables (“**Deliverables**”) set forth in the applicable Quote. The Applications, Documentation, and Deliverables will hereinafter collectively be referred to as the “**Services**.”

The Parties agree as follows:

1. TERM

The term of this Agreement will be set forth on the Quote and continue until termination of the last Quote (“**Term**”).

2. SERVICES

2.1 Services are set forth in the applicable Quote and/or Professional Services Addendum.

2.2 Service Provider will use reasonable efforts to achieve Service Provider’ availability goals described in the Service Level Agreement.

2.3 Customer may receive certain support services for the Application pursuant to the Support Agreement.

3. TERMINATION

3.1 This Agreement may be terminated by Service Provider immediately and without notice if Customer: (a) fails in the performance of any of its material obligations under this Agreement and does not cure such failure within thirty (30) days after receipt of notice in writing from Service Provider; (b) commences insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts; (c) makes a general assignment for the benefit of creditors; or (d) dissolves or ceases to conduct business in the ordinary course; (e) fails to make any payments due hereunder within fifteen (15) days of the due date.

3.2 This Agreement may be terminated by Customer on ninety (90) days written notice to Service Provider if Service Provider fails to perform any material obligation required of it hereunder, and such failure is not cured within ninety (90) days from Service Provider’ receipt of Customer’s notice or a longer period if Service Provider is working diligently towards a cure.

3.3 The following sections of this Agreement shall continue in full and force and effect upon termination of this Agreement or expiration of the Term: 3.3, 5.1, 8, 9, 10, 11, and 12. If this Agreement is terminated by Service Provider for a material breach as stated above, Service Provider shall have the right to immediately stop providing all Services. Upon termination of this Agreement, each Party shall deliver to the other Party all of such other Party’s Confidential Information (as such term in Section 8 that such Party may have in its possession or control. Upon termination of this Agreement, Customer shall no longer access the Services and Customer shall not circumvent any security mechanisms contained therein. Customer.

4. LICENSE

4.1 License Grant. Service Provider grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, and non-assignable right and license during the Term to access and use the Application, as hosted by Service Provider pursuant to the term set forth in the Quote solely with the Customer's website to perform those functions described in the Documentation.

4.2 License Restriction. Customer shall not allow any website, that is not fully owned by Customer, to frame, syndicate, distribute, replicate, or copy any portion of Customer's web site that provides direct or indirect access to the Services. Customer shall not permit any subsidiaries, affiliated companies, or third parties to access the Services.

4.3 Customer License Grant. Customer grants to Service Provider a non-exclusive, royalty-free license to access, use, reproduce, modify, perform, display and distribute Customer data as is reasonable or necessary for Service Provider to perform or provide the Services.

5. OWNERSHIP

5.1 Reservation of Rights. Service Provider reserves all rights not specifically granted herein. By signing the Quote, Customer irrevocably acknowledges that Customer has no ownership interest in the Services or Confidential Information provided by Service Provider to Customer. Service Provider shall own all right, title, and interest in such Services and Confidential Information. Nothing in this Agreement will preclude Service Provider from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by Service Provider in the performance of Services hereunder.

5.2 Marks and Publicity. Service Provider and Customer trademarks, trade names, service marks, and logos, whether or not registered ("**Marks**"), are the sole and exclusive property of the respective owning party, which owns all right, title and interest therein. Service Provider may: (i) use the Customer's name and/or logo within product literature, press release(s), social media, and other marketing materials; (ii) quote the Customer's statements in one or more press releases; and/or (iii) make such other use of the Customer's name and/or logo as may be agreed between the parties. Additionally, Service Provider may include Customer's name and/or logo within its list of customers for general promotional purposes. Service Provider shall comply with Customer's trademark use guidelines as such are communicated to Service Provider in writing and Service Provider shall use the Customer's Marks in a manner that is consistent with industry practice. Neither party grants to the other any title, interest or other right in any Marks except as provided in this Section 5.2.

6. PAYMENT AND BILLING

6.1 Fees. Customer shall pay Service Provider the fees indicated on the Quote. Unless otherwise provided in a Quote, all fees are to be paid to Service Provider within thirty (30) days of the date of invoice. Any and all payments required to be made hereunder are to be timely made by the Customer, and no payments to Service Provider will be withheld, delayed, reduced, or refunded if Service Provider has fully and completely performed its material obligations and its inability to meet any schedule requirements is caused by Customer's failure to provide certain of its facilities, computer resources, software, personnel, or business information as are required to perform this Agreement. Any late payment will be subject to any costs of collection (including reasonable legal fees) and will bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or at the maximum rate permitted by law, whichever is less. If Customer has set up a direct debit, Service Provider will not debit Customer's designated account before seven (7) days have elapsed from the date of the invoice. If Customer is delinquent on a payment of fees for fifteen (15) days or more, Service Provider may suspend access to the Services. Complaints concerning invoices must be made in writing within thirty (30) days from the date of the invoice. Invoices will be sent by electronic delivery unless requested otherwise by Customer, additional fees will apply.

6.2 Taxes. The license, service fees, and other amounts required to be paid hereunder do not include any amount for taxes or levy (including interest and penalties). Customer shall reimburse Service Provider and hold Service Provider harmless for all sales, use, VAT, excise, property or other taxes or levies that Service Provider is required to collect or remit to applicable tax authorities. This provision does not apply to Service Provider' income or franchise taxes, or any taxes for which Customer is exempt, provided Customer has furnished Service Provider with a valid tax exemption certificate

6.3 Expenses. Unless otherwise specifically stated in the Quote, the fees do not include expenses; Customer shall reimburse Service Provider for all reasonable travel, food, lodging, and other out-of-pocket expenses incurred in performance of this Agreement. Service Provider agrees to comply with Customer's expense policies, as long as Customer provides those policies to Service Provider with reasonable advance notice and in writing. If any additional work is performed beyond the scope of the Quote, the rate will be mutually agreed upon by the parties or if no such rate is established, such work will be performed under Service Provider' standard rate in effect at the time.

7. CUSTOMER OBLIGATIONS

7.1 Customer agrees that no employees or contractors of Service Provider will be required to individually sign any agreement in order to perform any services hereunder including, but not limited to, access agreements, security agreements, facilities agreements or individual confidentiality agreements.

7.2 Customer agrees to comply with all applicable laws, regulations, and ordinances relating to this Agreement. Customer shall ensure that each website for which the Application is engaged contains or is linked to a privacy policy that governs its data collection and use practices.

7.3 The Customer shall be obliged to inform its personnel before the beginning of use of the Services about the rights and obligations set forth in this Agreement. The Customer will be liable for any violation of obligations by its personnel or by other third parties who violate obligations within the Customer's control.

7.4 The Customer shall be obliged to keep the login names and the passwords required for the use of the Application confidential, to keep it in a safe place, and to observe copyright regulations and protect the Application against unauthorized access by third parties with appropriate precautions. Personal access data must be changed at regular intervals.

7.5 Before entering its data and information, the Customer shall be obliged to check the same for viruses or other harmful components and to use state of the art anti-virus programs for this purpose. In addition, the Customer itself shall be responsible for the entry and the maintenance of its data.

7.6 Service Provider has the right (but not the obligation) to suspend access to the Application or remove any data or content transmitted via the Application without liability (i) if Service Provider reasonably believes that the Application is being used in violation of this Agreement or applicable law, (ii) if requested by a law enforcement or government agency or otherwise to comply with applicable law, provided that Service Provider shall use commercially reasonable efforts to notify Customer prior to suspending the access to the Application as permitted under this Agreement, or (iii) as otherwise specified in this Agreement. Information on Service Provider' servers may be unavailable to Customer during a suspension of access to the Application. Service Provider will use commercially reasonable efforts to give Customer at least twelve (12) hours' notice of a suspension unless Service Provider determines in its commercially reasonable judgment that a suspension on shorter or contemporaneous notice is necessary to protect Service Provider or its customers.

8. CONFIDENTIALITY

8.1 Definition. “Confidential Information” includes all information marked pursuant to this [Section 8.1](#) and disclosed by either party, before or after the Effective Date, and generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by a party that contains, reflects, or is derived from such information. For clarity, the term ‘Confidential Information’ does not include any personally identifiable information. Obligations with respect to personally identifiable information (if any) are set forth in a separate agreement between the parties. All Confidential Information in tangible form will be marked as “Confidential” or the like or, if intangible (e.g., orally disclosed), will be designated as being confidential at the time of disclosure and will be confirmed as such in writing within thirty (30) days of the initial disclosure. Notwithstanding the foregoing, the following is deemed Service Provider Confidential Information with or without such marking or written confirmation: (i) the Services and other related materials furnished by Service Provider; (ii) the oral and visual information relating to the Application; and (iii) this Agreement.

8.2 Exceptions. Without granting any right or license, the obligations of the parties hereunder will not apply to any material or information that: (i) is or becomes a part of the public domain through no act or omission by the receiving party; (ii) is independently developed by the other party without use of the disclosing party’s Confidential Information; (iii) is rightfully obtained from a third party without any obligation of confidentiality; or (iv) is already known by the receiving party without any obligation of confidentiality prior to obtaining the Confidential Information from the disclosing party. In addition, neither party will be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government, provided that notice is promptly given to the disclosing party so that the disclosing party may seek a protective order and engage in other efforts to minimize the required disclosure. The parties shall cooperate fully in seeking such protective order and in engaging in such other efforts.

8.3 Non-Disclosure. Each party agrees at all times to use all reasonable efforts, but in any case no less than the efforts that each party uses in the protection of its own Confidential Information of like value, to protect Confidential Information belonging to the other party. Each party agrees to restrict access to the other party’s Confidential Information only to those employees or Subcontractors who: (i) require access in the course of their assigned duties and responsibilities; and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this [Section 8.3](#). Neither party shall, in whole or in part, sell, lease, license, assign, transfer, or disclose the Confidential Information to any third party and shall not copy, reproduce or distribute the Confidential Information except as expressly permitted in this Agreement.

9.0 REPRESENTATIONS AND WARRANTIES

9.1 Warranties. Each Party represents and warrants that it has the right to enter into this Agreement and that the Quote(s) will be executed by an authorized representative of each entity.

9.2 No Malicious Code. To the knowledge of Service Provider, the Application does not contain any malicious code, program, or other internal component (e.g. computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, or alter the Application, or which could reveal, damage, destroy, or alter any data or other information accessed through or processed by the Application in any manner. This warranty will be considered part of and covered under the provisions of this Agreement. Customer must: (i) notify Service Provider promptly in writing of any nonconformance under this warranty; (ii) provide Service Provider with reasonable opportunity to remedy any nonconformance under the provisions of this Agreement; and (iii) provide reasonable assistance in identifying and remedying any nonconformance.

9.3 Services Warranty. Service Provider warrants that all services performed hereunder shall be performed in a workmanlike and professional manner.

9.4 Disclaimer of Warranties. THE SERVICES, CONFIDENTIAL INFORMATION AND ANY OTHER TECHNOLOGY AND MATERIALS PROVIDED BY SERVICE PROVIDER TO THE CUSTOMER ARE PROVIDED 'AS-IS' AND WITHOUT WARRANTY OF ANY KIND. EXCEPT AS OTHERWISE EXPRESSLY STATED IN SECTION 9 OF THIS AGREEMENT, SERVICE PROVIDER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. NEITHER SERVICE PROVIDER (NOR ANY OF ITS SUBSIDIARIES, AFFILIATES, SUPPLIERS OR LICENSORS) WARRANTS OR REPRESENTS THAT THE APPLICATION OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, DATA, CONFIDENTIAL INFORMATION, AND PROPERTY.

9.5 Modifications. Notwithstanding anything to the contrary in this Section 9, any and all warranties under this Agreement are VOID if Customer has made changes to the Services or has permitted any changes to be made other than by or with the express, written approval of Service Provider.

10. INDEMNIFICATION

10.1 Service Provider Indemnity. Service Provider will defend at its expense any cause of action brought against Customer, to the extent that such cause of action is based on a claim that the Application, as hosted by Service Provider to Customer, infringes a United States patent, copyright, or trade secret of a third party. Service Provider will pay those costs and damages finally awarded against Customer pursuant to any such claim or paid in settlement of any such claim if such settlement was approved in advance by Service Provider. Customer may retain its own counsel at Customer's own expense.

10.2 No Liability. Service Provider will have no liability for any claim of infringement based on: (i) Application which has been modified by parties other than Service Provider where the infringement claim would not have occurred in the absence of such modification; (ii) Customer's use of the Application in conjunction with data where use with such data gave rise to the infringement claim; or (iii) Customer's use of the Application outside the permitted scope of this Agreement.

10.3 Remedies. Should the Application become, or in Service Provider' opinion is likely to become, the subject of a claim of infringement, Service Provider may, at its option, (i) obtain the right for Customer to continue using the Application, (ii) replace or modify the Application so it is no longer infringing or reduces the likelihood that it will be determined to be infringing, or (iii) if neither of the foregoing options is commercially reasonable, terminate the access and use of the Application. Upon such termination, Customer shall cease accessing the Application and Service Provider will refund to Customer, as Customer's sole remedy for such license termination, the subscription fees paid by Customer for the terminated license for the past twelve (12) months. THIS SECTION 10 STATES THE ENTIRE LIABILITY OF SERVICE PROVIDER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT REGARDING THE APPLICATION.

10.4 Customer Indemnity. Customer agrees to defend, indemnify, and hold Service Provider and its officers, directors, employees, consultants, and agents harmless from and against any and all damages, costs, liabilities, expenses (including, without limitation, reasonable attorneys' fees), and settlement amounts incurred in connection with any claim arising from or relating to Customer's: (i) breach of any of its obligations set forth in Section 7 (Customer Obligations); (ii) Customer's gross negligence or willful misconduct; (iii) actual or alleged use of the Application in violation of this Agreement or applicable law by Customer or any of its personnel; (iv) any actual or alleged infringement or misappropriation of third party intellectual property rights arising from data provided to Service Provider by the Customer or otherwise inputted into the Application, whether by the Customer, Customer's personnel or otherwise including Customer Work Product (as defined below); and/or (v) any violation by Customer or its personnel, of any terms, conditions, agreements or policies of any third party service provider. "**Customer Work Product**"

means that data and those forms developed or acquired by Customer for internal business purposes independent from Service Provider or the Application.

10.5 Indemnification Procedures. Each indemnifying party's obligations as set forth in this Section 10 are subject to the other party: (i) giving the indemnifying party prompt written notice of any such claim or the possibility thereof; (ii) giving the indemnifying party sole control over the defense and settlement of any such claim; and (iii) providing full cooperation in good faith in the defense of any such claim

11. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SERVICE PROVIDER BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), ATTORNEYS FEES AND COSTS, OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE SERVICES WHICH GAVE RISE TO SUCH DAMAGES UNDER THE QUOTE THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SERVICE PROVIDER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES AND COSTS, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL.

THE FOREGOING LIMITATIONS APPLY EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

12. GENERAL PROVISIONS

12.1 Force Majeure. Service Provider will not be liable to Customer if it is unable to perform any of its obligations under this Agreement because of any cause reasonably beyond its control, including, without limitation, acts of God, political uncertainties, war, insurrection, third party labor disputes and strikes, acts or orders of government authorities, electrical or power outages or interruptions, fire, flood or explosion.

12.2 Assignment. This Agreement and each Quote is personal to Customer and Customer may not assign its rights, duties, or obligations under this Agreement or any Quote to any person or entity without the prior written permission of Service Provider. Any purported assignment of this Agreement, or any license or rights in violation of this Section 12.2 will be deemed void.

12.3 Entire Agreement. This Agreement, along with the documents referenced herein and each executed Quote, constitutes the entire understanding of the Parties and supersedes all prior discussions, negotiations, agreements and understandings, whether oral or written, with respect to its subject matter. This Agreement may be amended only by written instrument signed by both Parties.

12.4 Severability and Waiver. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. The failure of Service Provider to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless Service Provider acknowledges and agrees in writing.

12.5 Relationship of Parties. Service Provider is a contractor and nothing in this Agreement shall be construed to create a partnership or joint venture between the Parties or to authorize either Party to act as

the agent for the other Party or to permit a Party to undertake or bind the other Party to any contract or undertaking.

12.6 Governing Law. This Agreement is governed by the laws of the State of Texas, excluding its choice of law rules, the Uniform Computer Information Transactions Act (UCITA), and the United Nations Convention on Contracts for the Sale of Goods. The exclusive venue for all disputes under this Agreement shall be the state or federal courts in Travis County, Texas. Mediation will be held in Austin, Texas.

12.7 Dispute Resolution.

Negotiations. Where there is a dispute, controversy, or claim arising under, out of, or relating to this Agreement, the aggrieved Party shall notify the other Party in writing of the nature of such dispute with as much detail as possible about the alleged deficient performance of the other Party. A representative from senior management of each of the Parties shall meet in person or communicate by telephone within five (5) business days of the date of the written notification in order to reach an agreement about the nature of the alleged deficiency and the corrective action to be taken by the respective Parties.

Mediation. Any dispute, controversy, or claim arising under, out of, or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach, or termination, as well as non-contractual claims, and any claims with respect to the validity of this mediation agreement (hereinafter the “**Dispute**”), shall be submitted to mediation in accordance with the then-current WIPO Mediation Rules.

Opportunity to Cure. Notwithstanding anything contained hereunder, Customer agrees and acknowledges that no dispute resolution or litigation will be pursued by Customer for any breach of this Agreement until and unless Service Provider has had an opportunity to cure any alleged breach. Customer agrees to provide Service Provider with a detailed description of any alleged failure and a description of the steps that Customer understands must be taken by Service Provider to resolve the failure. Service Provider shall have sixty (60) days from Service Provider’ receipt of Customer’s notice to complete the cure.

Injunctive Relief. The Parties agree that it will not be inconsistent with their duty to mediate to seek injunctive or other interim relief from a competent court. The Parties, in addition to all other available remedies, shall each have the right to initiate an action in any court of competent jurisdiction in order to request injunctive or other interim relief with respect to a violation of intellectual property rights or confidentiality obligations. The choice of venue does not prevent a Party from seeking injunctive or any interim relief in any appropriate jurisdiction.

12.8 Third Parties. Service Provider will have the right to use third parties, including, but not limited to, employees and contractors of Service Provider’ affiliates and subsidiaries (“**Subcontractors**”) in performance of its obligations and services hereunder and, for purposes of this Agreement, all references to Service Provider or its employees will be deemed to include such Subcontractors.

12.9 Technical Data. Customer shall not provide to Service Provider any technical data as that term is defined in the International Traffic in Arms Regulations (“**ITAR**”) at 22 CFR 120.10. Customer shall certify that all information provided to Service Provider has been reviewed and scrubbed so that all technical data and other sensitive information relevant to Customers’s ITAR regulated project has been removed and the information provided is only relevant to bug reports on Service Provider products.

12.10 Compliance with Laws. Both Parties agree to comply with all applicable laws, regulations, and ordinances relating to such party’s performance under this Agreement.

12.11 Restricted Rights. Use of the Application by or for the United States Government is conditioned upon the Government agreeing that the Application is subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. Customer shall be responsible for assuring that this provision is included in all agreements with the United States Government and that the Application, when accessed by the Government, is correctly marked as required by applicable Government regulations governing such Restricted Rights as of such access.

12.12 Non-solicitation. During the term of this Agreement and for a period of two (2) years thereafter, Customer agrees not to hire, solicit, nor attempt to solicit, the services of any employee or Subcontractor of Service Provider without the prior written consent of Service Provider. Customer further agrees not to hire, solicit, nor attempt to solicit, the services of any former employee or Subcontractor of Service Provider for a period of one (1) year from such former employee's or Subcontractor's last date of service with Service Provider. Violation of this provision will entitle Service Provider to liquidated damages against Customer equal to two hundred percent (200%) of the solicited person's gross annual compensation.

12.13 Headings. Headings are for reference purposes only, have no substantive effect, and will not enter into the interpretation hereof.

12.14 Notices. Notices shall be effective upon delivery. All notices shall be sent to the applicable address specified below or to such other address as the parties may designate in writing. Any notice of material breach will clearly define the breach including the specific contractual obligation that has been breached.

To Service Provider:
MyAlerts Inc.
Attn: Contracts Manager
401 Congress Ave, Suite 2650
Austin, TX 78701