**ALERTENTERPRISE, INC.**

**4350 Starboard Drive**

**Fremont, CA 94538**

**RETURN FAX #: 510-897-6785**

##### SOFTWARE SUBSCRIPTION LICENSE AGREEMENT

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| --- | --- | --- |
| **CUSTOMER:** |  | |
| ADDRESS: |  | |
| CITY/STATE/ZIP: |  | |
|  |  | |
| STATE OF INCORPORATION: |  | |
|  |  | |
| TELEPHONE NUMBER: |  | |
| FAX NUMBER: |  | |
| AGREEMENT TO BE RETURNED TO: |  | Email: |
| INTERNAL TECHNICAL REPRESENTATIVE: |  | Email: |
|  |  |  |

This Software Subscription License Agreement is entered into as of the last signature date indicated below, by and between AlertEnterprise, Inc., a Delaware corporation (“**ALERT**”), and the “**Customer**” set forth above. In consideration of the terms and conditions contained in this Facing Page, the Standard Terms and Conditions and the attached Schedules (collectively the “**Agreement**”) the parties agree to be bound hereby.

ATTACHMENTS:

STANDARD TERMS AND CONDITIONS

SCHEDULES:

Schedule 1 Description of Managed Services

Schedule 2 Form of Order Schedule

IN WITNESS WHEREOF, THE PARTIES LISTED BELOW HAVE EXECUTED THIS AGREEMENT, AND THIS AGREEMENT IS EFFECTIVE AS OF THE DATE OF THE LAST SIGNATURE SET FORTH BELOW (THE “EFFECTIVE DATE”).

**ALERTENTERPRISE, INC. CUSTOMER:**

By: By:

Printed: Printed:

Title: Title:

Date: Date:

**ALERTENTERPRISE, INC.**

**SOFTWARE SUBSCRIPTION LICENSE AGREEMENT**

**STANDARD TERMS AND CONDITIONS**

ALERT provides Software pursuant to the terms of this Agreement and Customer desires to license, host and maintain such Software on Customer’s Servers or private Cloud instance. ALERT also provides support services related to management of the Software (not including the Customer Technology). ALERT will provide the Software to Customer, as well as such support services as the parties may agree, now and pursuant to future Order Schedule(s). Therefore, in consideration for the commitments set forth below, the adequacy of which consideration the parties hereby acknowledge, the parties agree as follows:

1. **DEFINITIONS:**

**“ALERT Technology”** shall mean the Software and any and all enhancements, improvements or derivative works thereof, technology, trade secrets and any other intellectual property owned, developed, created, orcontrolled by ALERT, excluding Customer Technology and Third Party Software**.**

**“Authorized Users**” shall mean those parties authorized by Customer to access the Software and is limited to Employees and Business Third Parties.

“**Business Third Parties”** shall mean any third party, including service providers, consultants, Software integrators and the like, whose work for Customer requires access to the Software to facilitate Customer’s internal business activities.

**“Customer Technology”** shall mean the Customer controller Servers, Cloud, network, hardware, software, data files, materials, technology, and other intellectual property owned or controlled by Customer, excludingALERT Technology.

**“Cloud”** shall mean Customer’s private instance of a cloud hosting solution that Client may choose to use run, host, maintain, and secure the Software.

**“Confidential Information”** shall have the meaning given such term in Section 15.

**“Customer Affiliate”** shall mean an entity in which Customer owns more than fifty percent (50%) of the voting securities. Any such entity shall be considered a Customer Affiliate for only such time as Customer continues to own such equity interest.

**“Customer Content”** shall mean information, data files, and materials, downloaded, transferred or input by Customer or Authorized Users to the Software, including, without limitation, background queries and the results of those queries. Customer retains ownership and intellectual property rights in and to its Customer Content.

**“Documentation”** shall mean the documentation, which will be updated from time to time, provided by ALERT in connection with the Software.

**“Employees”** shall mean employees, full or part-time, who are employed by Customer and under its direct supervision.

**“Error”** shall have the meaning given in Schedule 1 Description of Managed Services.

**“Authorized Facilities”** shall mean Customer’s facilities (equipment, networks or other access controlled resources as well as physical premises) with respect to which Customer is authorized to use certain Software functionality or features provided by ALERT (e.g.: FedCheck Services) as indicated in the Order Schedule.

**“Identities(s)”** shall mean a unique identifier entered into the Software that corresponds to an individual, for example, a visitor, contractor, tenant, vendor, etc.

**“Managed Services”** shall mean the support and services as described in Schedule 1 to this Agreement.

**“Order Schedule”** shall mean a separate ordering document for use and access to the Software and Managed Services entered into between Customer and ALERT or an ALERT authorized reseller in the form attached hereto as Schedule 2.

**“Servers”** shall mean the number of Customer controlled servers or devices authorized to receive access to the Software.

**“Software”** shall mean a machine executable copy of the object code of certain ALERT proprietary software products which are licensed to Customer asdescribedin an Order Schedule.

“**Start Date”** shall mean the date when ALERT delivers the license key for the Software under the initial Order Schedule.

**“Subscription Term”** shall mean the subscription term provided on the applicable Order Schedule commencing on the Start Date and will continue until the end of the subscription term provided in the initial Order Schedule and include any additional renewal period. Unless otherwise provided in the underlying Order Schedule, the Subscription Term shall be annual.

**“Third Party Software”** shall have the meaning given such term in Section 2.

1. **LICENSE RIGHTS:**
2. **Software License.** Subject to the terms and conditions of this Agreement (including the payment of all Fees (defined below)) ALERT hereby grants to Customer, as of the Start Date, a nonexclusive, nontransferable, non-sublicensable, worldwide license effective during the Subscription Term to use, operate, install, or have installed, the Software on the authorized number of Servers solely for Customer’s internal business operations and subject to the usage limitations listed on the Order Schedule including, without limitation, the authorized number of Identities.
3. **Third Party Licenses and Open Source**. The Software may contain open source components which are licensed to Customer under the applicable open source licenses by open source components licensees **(**“**Open Source Components**”) and the Software may also include proprietary software components from other vendors under applicable licenses and together with the Open Source Components is collectively referred to as the “**Third Party Software”.** Subject to the terms and conditions of this Agreement and the Third Party Software licenses and notices, Customer agrees and acknowledges that Customer (a) has reviewed and understands the Third Party Software Licenses posted at:<http://www.alertenterprise.com/docs/3rdpartycomponents.html> and (b) shall abide at all times by the terms of any and all of the applicable Third Party Software licenses and notices.
4. **Authorized Users and Passwords.** Customer shall be solely responsible for the acts and omissions of the Authorized Users. Customer is responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the Authorized Users. If Customer wishes to provide access to the Software to Customer Affiliates(s) such Customer Affiliate shall enter into a separate Order Schedule with ALERT prior to accessing or using the Software. Customer is entirely responsible for all activities that occur under Customer’s account and all charges incurred from use of the Software accessed with Authorized User’s passwords. Customer shall: (a) notify ALERT immediately of any unauthorized use of any password or user id or any known or suspected breach of security, (b) report to ALERT immediately and use reasonable efforts to stop any unauthorized use of the Software that is known or suspected by Customer, and (c) not provide false identity information to gain access to or use of the Software. Customer shall indemnify ALERT and its licensors against losses or damages suffered by ALERT arising from any misuse of the Software by Authorized Users.
5. **Results.** Customer retains full and sole responsibility for Customer’s and its Authorized User’s use of the Software, including how information obtained through the Software (“**Results**”) is used, and for any decisions and actions that Customer and/or its Authorized Users may make or undertake in reliance of the Software or such Results.
6. **CUSTOMER TECHNOLOGY AND RESPONSIBILITIES:**

Customer is responsible for obtaining, configuring and maintaining all Customer Technology, including all Server and Cloud instances, computer hardware, software and communications equipment needed to access and use the Software, and for paying all third-party access charges (e.g., ISP, telecommunications, hosting services, etc.) incurred while using the Software.

Customer shall provide commercially reasonable information and assistance to ALERT to enable ALERT to deliver the Software and Managed Services. Customer acknowledges that ALERT’s ability to deliver the Software in a manner provided in this Agreement may depend upon the accuracy and timeliness of such information and assistance. Without limiting the foregoing, Customer hereby grants to ALERT during the Subscription Term access to the Customer’s Servers, Cloud and Customer Content as needed for ALERT to provide the Software and Managed Services.

Customer may transfer the Software from one Server or Cloud instance to another at no additional Fee, so long as Customer provides ALERT with ten (10) days prior written notice and Customer is responsible for the cost of any migration tools, additional third party software or software or services required to transfer to the Server or new Cloud instance and Customer deletes the Software from the Servers no longer in use. The Software transfer shall not exceed the authorized number of licensed Server(s) and/or licensed Identities.

Customer shall use best practices to secure the Customer Technology, Software and Customer Content and immediately notify ALERT in writing of any breaches in security to the Customer Technology, Software and/or Customer Content.

1. **MANAGED SERVICES:**

Provided Managed Services are purchased and paid for by the Customer, ALERT shall provide the Managed Services described in Schedule 1. The remedies provided in connection with Errors as described in Schedule 1 are Customer’s sole remedy for any failure of the Software, and Customer recognizes and agrees that if Schedule 1 does not list a remedy for a given failure, it has no remedy. ALERT is not required to issue credits or refunds under any circumstances, including without limitation after termination of this Agreement.

1. **PAYMENT OF FEES:**

Customer will pay ALERT the then applicable fees in US dollars in the amount described in a mutually agreed to Order Schedule in accordance with the terms therein (the “**Fees**”). ALERT’s invoices are due within 30 days of the date of invoice. For late payments, Customer shall pay interest charges from the time the payment was due at the rate that is the lower of 1.5% per month or the highest rate permissible under applicable law. If Customer’s use of the Software exceeds the Identities and/or other limitations set forth on the Order Schedule or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. ALERT reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the initial Subscription Term or then‑current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). All amounts payable under this Agreement are exclusive of all sales, use, and other taxes. Customer is responsible for all taxes assessed in connection with this Agreement, including sales, use, excise, value-added or governmental charges imposed on the use of the Software or Managed Services.

1. **USER RESTRICTIONS:**

The ALERT Software is licensed, not sold, and constitutes intellectual property and trade secrets of ALERT and is owned by ALERT and its suppliers. Except for the Open Source Components, all use of ALERT source code is expressly prohibited by Customer and Authorized Users under this Agreement.

Except as expressly permitted under this Agreement, Customer and its Authorized Users may not: (i) sublicense, reverse engineer, decompile, translate, copy, reproduce, modify, republish the Software or create or allow others to create a source code equivalent of the Software, (ii) use the Software for any credit-verification or credit reporting purposes, or in connection any hiring or other employment action (other than as screening to access Authorized Facilities) or to screen individuals or otherwise discriminate based on race, color, national origin, religion, age, gender, sexual orientation, or disability or any other unlawful or improper basis, (iii) make the Software available to any person other than an Authorized User, (iv) upload, transmit or distribute any data or files that contain viruses, malicious code, corrupted files or any similar software or programs to or through the Software, (v) distribute, disseminate, reverse engineer, decompile, translate, dissemble or otherwise attempt to derive the source code of the Software, Software or mobile app provided under this Agreement or allow others to do so, (vi) use the Software to provide software application services, time-sharing or service bureau services to third parties (vii) disclose any ALERT trade secret or Confidential Information including, non-public Software features with any third party, (viii) remove, modify or obscure any copyright, trademark or proprietary notices contained in the Software or contained in the Documentation (ix) breach, disable, tamper with, or develop or use (or attempt) any workaround for, any security measure provided or used by the Software; (ix) access the Software via any bot, web crawler or non-human user, or to perform any data scraping, data mining, caching, or similar function; or (x) access or use (or permit a third party to access or use) the Software for any unlawful purpose, or for purposes of monitoring the availability, performance or functionality of the Software or for any other benchmarking or competitive purposes.

No right or license, express or implied, is granted hereunder for the use of any of ALERT or Customer trade names, service marks or trademarks. All rights not expressly granted under this Agreement are reserved by ALERT. There are no implied rights granted herein. Customer agrees to implement reasonable controls to ensure compliance with the intended use of the Software authorized by this Agreement.

1. **COMPLIANCE WITH LAWS:**

Each party represents and warrants that (i) it has the full right, power and authority to execute and enter into this Agreement and to perform its obligations hereunder; (ii) it is knowledgeable as to all federal, state, and local laws and regulation pertaining to its business, operations and intended use of the Software; and (iii) it is a legitimate business entity in good standing and has a lawful purpose for use of the Software, consistent with the usage restrictions herein. Customer shall comply with all applicable local, state, national and foreign laws in connection with the use of the Software and Managed Services, including the laws related to data privacy, international communications and the transmission of technical or personal data. Customer agrees to comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions to ensure that neither the Software nor any direct product thereof, are: (i) exported or re-exported directly or indirectly in violation of such export laws and regulations; or (ii) used for any purposes prohibited by such export laws and regulations.

1. **GOVERNMENT RIGHTS:**

If Customer is the U.S. government or any agency or other division thereof, the Software is furnished under the Agreement as a “commercial item,” and more specifically as “commercial computer software” and “commercial computer software documentation” (as applicable), as those terms are defined and used in the U.S. Code of Federal Regulations (48 C.F.R. § 2.101) and other applicable regulations, and the government’s rights with respect to such software and services (and to any associated technical data or other materials) are limited to those rights expressly granted in this Agreement.

1. **CUSTOMER CONTENT AND USER INFORMATION**:
2. **Customer Content**. Customer acknowledges that ALERT exercises no control over the Customer Content. ALERT will have no responsibility or liability for the accuracy of data uploaded to the Software, including without limitation Customer Content and any other data uploaded by Authorized Users. Customer is solely responsible for ensuring, and Customer hereby represents and warrants, that Customer’s uploading of Customer Content to the Software, and the collection, processing, and use of Customer Content as contemplated by this Agreement, will (and for so long as Customer uses the Software will continue to) comply with applicable laws and third-party terms and conditions of use, and privacy and security best practices. Customer hereby agrees to indemnify and hold ALERT harmless for any loss, damage, expense, cost, or claim (including reasonable attorneys’ fees), arising from Customer’s failure to comply with this provision or applicable laws. Customer shall not upload, post, reproduce or distribute any information, software, or other material protected by copyright, privacy rights, or other intellectual property rights without first obtaining the permission of the owner of such rights. Customer acknowledges and agrees that ALERT’s performance of this Agreement may require ALERT to process, transmit, and/or store personal data of Customer or the personal data of Identities (“**Personal Data**”). By submitting Personal Data to the Software, Customer agrees that ALERT may process, transmit, and/or store Personal Data only to the extent necessary for, and for the sole purpose of enabling ALERT to perform its obligations under this Agreement. In relation to all Personal Data, Customer will be responsible as the Data Controller for complying with all applicable data protection or similar law such as the EU General Data Protection Regulation 2016/679 and laws implementing that Regulation that regulate the processing of Personal Data and special categories of data as such terms are defined in that Regulation. Customer agrees to obtain all necessary consents and make all necessary disclosures before including Personal Data in Customer Content and confirms that Customer is solely responsible for all Personal Data included in Customer Content. Customer agrees that the specific terms for the processing of Personal Data will be in accordance with the terms of ALERT’s standard and current Data Processing Addendum incorporated into this Agreement.  Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the Software, Customer assumes such risks.
3. **Information about Devices**.Customer acknowledges and agrees that ALERT collects (a) information about devices in and around Customer’s network, including, but not limited to, Internet Protocol (IP) addresses of devices in Customer’s network(s) and (b) additional information about these devices such as information about device activity, host name, configuration, operating Software, and login identities used from the devices ((a) and (b), collectively “**Device Information**”).
4. **Information about Users.** In addition to information described in Sections 9A and 9B above, the Software has the ability to capture additional information depending on which features Customer chooses to enable. If Customer chooses to enable any optional functionality in the Software that takes as input or collects information about users accessing Customer’s network (“**User Identities**”), ALERT will receive and store such information in accordance with the data entry and/or configuration settings Customer makes. ALERT will receive and store User Identities utilizing data protection tools and techniques in accordance with industry practices.
5. **WARRANTY:**

ALERT warrants for a period of sixty (60) days after delivery of the Software (the “Warranty Period”) (i) the media on which each copy of the Software is furnished will be free of defects in materials; and (ii) the Software will operate substantially in accordance with the published specifications. For any breach of this warranty, and subject to Customer notifying ALERT in writing during the Warranty Period of the defect, ALERT will promptly repair or replace any defective media or Software, which fails to comply with such warranty. In the event ALERT is unable to repair or replace the Software, the applicable Software license Fees paid by Customer, upon the return of the nonconforming Software, will be refunded. The above is Customer’s sole and exclusive remedy and ALERT’s sole and exclusive obligation and liability for breach of the Software product warranty.

EXCEPT AS SPECIFIED IN THIS AGREEMENT, ALERT MAKES NO WARRANTIES AND HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT AND THOSE ARISING FROM A COURSE OF DEALING, USAGE OF TRADE. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

1. **THIRD PARTY SOFTWARE:**

If, in connection with Customer’s access and/or use of the Software, Customer accesses or uses any third-party software or services, Customer’s use of such software and services shall be governed by the terms and conditions of the agreement under which Customer accesses or licenses such software from the third party. ALERT shall not be responsible for providing support for any third-party software or liable for any defects of any third-party software. Customer shall defend, indemnify, and hold ALERT and its affiliates and their respective officers, directors, employees, affiliates, subsidiaries, agents, licensors, suppliers, service providers and representatives harmless against any liabilities, losses, damages, claims, demands, fees, expenses and other costs of any kind or nature, including, without limitation, any attorney fees, expert fees, filing fees, judgments, awards and settlement amounts associated therewith, as and when incurred, arising out of or related to Customer’s use of third-party software and/or services in connection with the Software.

1. **DISCLAIMER:**

ALERT IS NOT RESPONSIBLE FOR THE PERFORMANCE, MAINTENANCE OR SECURITY OF CUSTOMER’S TECHNOLOGY, INCLUDING WITHOUT LIMITATION PERFORMANCE OF THE INTERNET, SERVERS OR THE CLOUD. ALERT DOES NOT GUARANTEE THE COMPATIBILITY OF PRODUCTS OR THAT THE SOFTWARE WILL PERFORM ERROR-FREE OR UNINTERRUPTED. CUSTOMER ACKNOWLEDGES THAT ALERT DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATION FACILITIES INCLUDING THE INTERNET, AND THAT THE SOFTWARE MAY BE SUBJECT TO LIMITATIONS AND DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. CUSTOMER ACKNOWLEDGES THAT CERTAIN FUNCTIONALITY PROVIDED BY A THIRD PARTY LICENSOR OR SERVICE PROVIDER MAY IMPACT THE AVAILABILITY OF CERTAIN FUNCTIONALITY IN THE SOFTWARE. ALERT DOES NOT WARRANT OR GUARANTEE THE ACCURACY OF ANY DATA OR RESULTS GENERATED BY THE SOFTWARE AND SHALL NOT BE LIABLE FOR ANY INACCURACY, OMISSION OR OTHER DEFECT IN THE RESULTS.

1. **LIMITATION OF LIABILITY**:

THE PARTIES AGREE THAT IN NO EVENT SHALL ALERT, ITS SUPPLIERS OR LICENSORS HAVE ANY LIABILITY TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF DATA, LOSS OF FUNCTIONALITY, INTERRUPTION OF BUSINESS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE ARISING FROM OR ASSOCIATED IN ANY WAY WITH THE SOFTWARE, DOCUMENTATION, THIRD PARTY SOFTWARE OR MANAGED SERVICES, EVEN IF ALERT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY RISK, WHICH IS SET FORTH IN THIS SECTION. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR CERTAIN DAMAGES, AND AS A CONSEQUENCE SOME OF THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER.

IN NO EVENT WILL ALERT’S, ITS SUPPLIER’S OR LICENSOR’S LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AGGREGATE OF THE AMOUNTS PAID AND PAYABLE BY THE CUSTOMER TO ALERT FOR ACCESS AND USE OF THE SOFTWARE IN THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM.

The provisions regarding limitation of liability and disclaimer shall survive the expiration or termination of this Agreement.

1. **INDEMNIFICATION**:
2. **Indemnification by ALERT**. ALERT will defend Customer against any claims, demands, suits or proceedings made or brought by a third party against Customer to the extent based upon an allegation that the Software as furnished by ALERT hereunder and used by Customer within the scope of this Agreement, infringes any copyright or any U.S. patent or trademark rights of any third party (a “**Claim**”) and pay all amounts awarded by a court of law or agreed to in a mutually agreed to settlement of such Claim. THE FOREGOING STATES THE ENTIRE OBLIGATION OF ALERT AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SOFTWARE. ALERT and its licensors shall have no liability under this Section to the extent that any Claims are based on (i) any combination of the Software with products, services, methods, content or other elements not furnished by ALERT, (ii) alteration or modification of the Software by anyone other than ALERT, (iii) ALERT’s compliance with Customer’s unique designs or specification, or (iv) any use of the Software in a manner that violates the terms of this Agreement.
3. **Mitigation Measures**. In the event of any Claim or potential Claim covered by this Section, ALERT may, in its discretion, seek to mitigate the impact of such Claim by modifying the Software to avoid the infringement, and/or by suspending or terminating Customer’s access to the Software upon reasonable notice (provided, in the case of such suspension or termination, that ALERT will refund a portion of any fees that Customer has prepaid for the then-current Subscription Term, based on the portion of that Subscription Term that is affected by the suspension or termination).
4. **Indemnification by Customer.** Customer shall defend ALERT against any third party claim, suit, or proceeding arising out of or related to Customer's alleged or actual use of, misuse of the Software, including without limitation: (a) claims relating to any breach of this Agreement by Customer, its affiliates, employees, agents or Authorized Users, (b) claims related to or caused by security breaches in the Customer Technology, including, but not limited to, unauthorized disclosure or exposure of personally identifiable information or other private information, including Personal Data and other Customer Content; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the Software through Customer’s account, including without limitation by Customer Content; and (d) claims that use of the Software through Customer’s account, including by Customer’s clients or Authorized Users, harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising.
5. **CONFIDENTIALITY**:

Confidential Information means any non-public information, data or know-how that has been disclosed by a party to this Agreement to the other party in writing, orally or by access to the disclosing party’s premises and either identified by the disclosing party as confidential or proprietary or which should reasonably be expected under the circumstances to be confidential or proprietary, including information disclosed by ALERT to Customer regarding the Software, its design, workflow and Documentation, and any confidential information of ALERT’s licensors. The Software (including, the specific design and structure of Software and Software) and Documentation are Confidential Information and trade secrets of ALERT and/or its licensors. The Order Schedule(s), prices and terms of this Agreement are Confidential Information of both parties.

With respect to Confidential Information, the receiving party shall (i) use it solely for the purposes specifically provided in this Agreement; and (ii) not disclose it to a third party, other than employees on a need-to-know basis or consultants, affiliates, agents or subcontractors (third parties) under nondisclosure agreements at least as strict as this Agreement, provided that such third parties are not competitors of the disclosing party, for a period of five (5) years from the date of disclosure or in perpetuity if the Confidential Information constitutes a trade secret under applicable law. The receiving party is liable for any misuse of Confidential Information by third parties. The foregoing obligations do not apply to information that (a) was rightfully in the possession of, or was known by, the receiving party prior to its receipt from the disclosing party, free of any obligation of confidence; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by the receiving party from a third party, without an obligation to keep such information confidential; or (d) is independently developed by the receiving party without use of the Confidential Information.

This section will not affect any other nondisclosure agreement between the parties. In the event the receiving party is required to disclose Confidential Information, including, but not limited to Customer Content, pursuant to applicable law, judicial or governmental order, or valid subpoena, such party will promptly notify the other party to allow intervention in response to such order. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Each party will retain all right, title, and interest in and to all their Confidential Information.

1. **TERM; TERMINATION**:
2. **Term.** The term of this Agreement will commence on the Effective Date and continue unless and until terminated pursuant to this Section 16. Unless otherwise provided in an Order Schedule, the initial Subscription Term for the Software and Managed Services shall be one (1) year commencing on the Start Date and shall each automatically renew for successive 12 month periods unless either party delivers written notice of non-renewal to the other party at least sixty (60) days prior to the expiration of the then-current Subscription Term.

B. **Termination.**

1. **Termination by ALERT**. ALERT reserves the right to terminate the license to the Software provided herein if Customer fails to timely pay any undisputed amount due to ALERT under this Agreement, but only after ALERT notifies Customer of such failure and such failure continues for fifteen (15) days. Suspension of the Software license shall not release Customer of its payment obligations under this Agreement.
2. **Cause**. Either party may terminate this Agreement and any Order Schedule upon written notice if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days written notice specifying the breach in detail. Notwithstanding any contrary provision herein, any termination of this Agreement pursuant to this Section 16 shall not terminate any Order Schedule mutually agreed to prior to any notice of termination herein and the terms of this Agreement shall continue to apply to such Order Schedule(s) unless and until such Order Schedule(s) is are terminated.
3. **Survival**. Sections that by their nature survive expiration or termination shall survive any expiration or termination of this Agreement.
4. **Customer Content.** Upon termination of an Order Schedule for use of the Software, Company shall immediately cease all use of the Software and delete, destroy, or return all copies of the Documentation in its possession or control. Customer is solely responsible for creating a back-up of the Customer Content.
5. **TITLE; OWNERSHIP AND EQUITABLE RELIEF**:
6. **Title**. ALERT, or its suppliers or licensors, retains all right, title, interest and intellectual property rights in the Software and underlying software, Documentation, and other deliverables provided by ALERT under this Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto (which feedback may include, but not limited to, any suggestion or idea for improving or otherwise modifying any of ALERT’S products or services). Customer agrees to assign all right, title, and interest it may have in the foregoing to ALERT.
7. **Equitable Relief**. Customer acknowledges that any breach of its obligations with respect to the proprietary rights of ALERT or its suppliers or licensors may cause irreparable injury, for which there may be inadequate remedy at law and, therefore, ALERT will be entitled to seek equitable relief in addition to all other rights and remedies available to it.
8. **ASSIGNMENT**:

Customer may not assign its rights or obligations under this Agreement, without the prior written consent of ALERT. ALERT may freely assign its rights and obligations under this Agreement. Any attempted assignment in derogation of this section will be null and void.

1. **EXPORT:**

Customer shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export any software provided by ALERT or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Software in, or export such software to, a country subject to a United States embargo.

1. **GOVERNING LAW**:

This Agreement shall be governed and construed by the laws of the State of California excluding its conflict of law rules and International Sale of Goods.

1. **ENTIRE AGREEMENT**:

This Agreement, together with the Schedules and Order constitute the entire agreement between the parties regarding Customer’s use of the Software, Documentation and Managed Services. No purchase orders, other ordering documentation, email or any handwritten or typewritten text which purports to modify or supplement this Agreement shall add to or vary the terms and conditions of this Agreement and ALERT expressly objects to any additional or different terms in any purchase orders or other correspondence submitted by Customer, and any such conflict terms are expressly rejected by ALERT. This Agreement replaces and supersedes any prior verbal understanding, written communications or representations made by the parties regarding the subject matter contained in this Agreement. No inconsistent, additional, or different terms in another document will have any force or effect unless such terms are incorporated into a formal amendment to this Agreement signed by both parties.

1. **FORCE MAJEURE**:

Neither Party shall be responsible for any resulting loss to the other Party if the fulfillment of any of the terms or provisions of this Agreement is delayed or prevented by strikes, work stoppages, shortage in materials, pandemic or epidemic, labor unrest, transportation stoppages, riots, wars, acts of terrorism, national emergency, floods, fires, earthquakes, tornadoes, acts of God, or by any other similar cause not within the control of the party whose performance is interfered with (each, an event of “**Force Majeure”**).

1. **GENERAL**:

Notices shall be in writing, sent to the addresses listed on the Facing Page and sent by overnight mail, courier, first-class mail or facsimile (followed by confirmation copy by mail), and are deemed received upon delivery. The parties shall not be liable for any failure to perform due to causes beyond its reasonable control. The failure to enforce any right will not be deemed a waiver of such or any other right, including the right to enforce a subsequent breach of the same obligation. In the event that any part of this Agreement is found to be unenforceable, the remainder shall continue in effect and such part shall be changed and interpreted so as to best accomplish the objectives of such part to the extent permissible by law and consistent with the intent of the parties as of the Effective Date. The parties are independent contractors and this Agreement will not be construed as a teaming agreement or joint venture. This Agreement may be executed in counterparts, each of which will be considered an original, but all counterparts together will constitute one agreement. A facsimile of a signed copy of this Agreement received from Customer may be relied upon as an original. The parties executing this Agreement represent and warrant they have the authority to enter into this Agreement on behalf of their respective party.

**SCHEDULE 1**

**MANAGED SERVICES**

ALERT will provide Managed Services to Customers that have an active and paid subscription to the Software and ALERT’s Managed Services.

**DESCRIPTION OF MANAGED SERVICES**:

ALERT will provide customer support services during business hours (8:00 a.m. to 5:00 p.m. local time), Monday through Friday (excluding major holidays) including support on minor configuration changes and customization as outlined below (See: **Production Issues Support Priority Errors and Response Times** and **Coverage & Exclusions**). Managed Services includes customer support to resolve Errors (defined below) that are reported by Customer via the AlertEnterprise Support Portal (accessed at <https://alertenterprise.crm.dynamics.com/main.aspx>) pursuant to the terms and schedule outlined in the “**Production Issues Support Priority Errors and Response Times**” section of this document. The services outlined in below in **Service Exclusions** and **Out of Scope** are excluded from Managed Services.

1. **DEFINITIONS**

* **“Case”** shall mean a report sent by Customer to the TCO (Technical Support Organization) regarding an Error or a service request.
* **“Customer Technical Representative(s)”** shall mean engineers of Customer who serve as the contacts with ALERT on all Managed Services.
* **“Error”** shall mean a material failure of the Software to conform to the documented design specifications.
* **“Fix”** shall mean, in ALERT’s discretion, a temporary work-around, Patch, or bypass supplied by ALERT to diminish or avoid the effect of an Error in the Software.
* **“New Release”** shall mean a new Software release, Software Version Release, or Interim Release of the Software.
* **“Patch”** shall mean an engineering Fix to a problem to be incorporated into the Software New Version Release.
* **“Response”** shall mean an acknowledgment from TSO of the receipt of the Case.
* **“Technical Support Organization”** shall mean a team of ALERT product specialists in the technical support organization and may also be referred to as “TSO.”
* **“AE Software Release”** shall mean an updated version of the Software with a limited number of new or enhanced functions and/or features. A new Software ion Release typically will be indicated by the addition of one (1) to the second digit of the release number (e.g., vX2.X would be the next Version Release after v.X.1.X).

1. **PRODUCTION ISSUES SUPPORT PRIORITY ERRORS AND RESPONSE TIMES** 
   1. To receive Managed Services, a Customer Technical Representative must report a Case to ALERT’s Technical Support Organization. A Case must be reported through the AlertEnterprise Support Portal at <https://alertenterprise.crm.dynamics.com/main.aspx>. Once a Case is received via the Support Portal a Response will be issued by ALERT within four (4) hours for Priority 1 issues. If a Case is submitted after hours, a Response will be issued on the next business day. ALERT will exercise commercially reasonable efforts to correct any Error reported by Customer according to the procedures set forth herein.

**Table 2.A Priority Levels and Response Times**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Priority of End User Incident** | **Description** | **SLA for Initial Reaction Time** | **SLA for Corrective Action** | **SLA for Response Time** |
|
| Priority 1  (Very high) | An Error is properly ascribed “Priority 1” if the Error has very serious consequences for normal business transactions and urgent, business critical work cannot be performed. The Error requires immediate processing because the malfunction can cause serious losses.  Complete Software outage   * Malfunctions of Software in the environment production * Top Issues | 1 hour (24x7 hours) | ~4-8 hours  (24x7 hours) | SLA for Corrective Action |
| Priority 2 (High) | An Error is properly ascribed “Priority 2” if normal business transactions are seriously affected, and necessary tasks cannot be performed. This is caused by incorrect or inoperable functions in the Software that are required to perform such transactions and/or tasks. The Error requires immediate processing because the malfunction can seriously disrupt the entire productive business flow. | 4 hours  Local Office Hours) | Resolution or Workaround ' in 7 business days. | 4 business days  (Local Office Hours) |
| Priority 3 (Medium) | An Error is properly ascribed “Priority 3” if normal business transactions are affected. The Error is caused by incorrect or inoperable functions in the Software.  Or  A request for “General Services” Request that requires a change in "Software Configuration” for the features in use by the customer. Please refer General Services- Coverage section for details  Or  A feature/product enhancement request which requires a code fix if accepted by ALERT as a product roadmap item. | 2 days | AE product roadmap | Align with AE product roadmap |
| Priority 4 (Low) | An Error is properly ascribed “Priority 4” if the Error has few or no effects on normal business transactions. The problem is caused by incorrect or inoperable functions in the Software that are not required daily or are rarely used. | 15 days | AE product roadmap | Align with AE product roadmap |

* 1. Upon receipt of a Case, a Technical Support Organization member will communicate with the Customer Technical Representative and report the status of ALERT’s efforts to correct the Error. In those instances where: (i) ALERT cannot provide a Fix to a Priority 1 Error within a reasonable time span after a member of TSO has responded to the Customer, or (ii) Customer is not satisfied with the progress attained, ALERT will review the plan for addressing such Error with Customer. Customer may escalate the matter to ALERT’s management if it reasonably determines the plan of action does not demonstrate ALERT is making commercially reasonable efforts to correct the Error considering its impact on Customer’s business.
  2. All General Service Requests are served as a separate queue for configuration and customization requests as “**Medium**” business Priority, any code/engineering enhancements are outside the scope of Managed Service. Such requests will be submitted to the ALERT Product Management group for review and approval for the future ALERT product roadmap subject to their acceptance. ALERT does not guarantee, such requests will be added to AE product in current or future roadmap. ALERT reserves all such rights to add or deny any such product customization requests in its sole discretion.

1. **PRODUCTION SUPPORT EXCLUSIONS**

Problems caused by or arising from the following will not be considered "Errors" for the purposes hereof and will not be subject to ALERT’s obligation to resolve:

* failure of server hardware or equipment not owned or directly controlled by ALERT.
* failure due to a third-party service provider (e.g.: cloud hosting provider, customer owned third party vendor Software, homegrown applications, or third-party API licenses etc.).
* failure of telecommunications or internet hardware or equipment not owned or directly controlled by ALERT.
* failure resulting from errors made by the Customer’s Software administrator.
* irreversible destruction of data caused by direct actions taken by Customer.
* Force Majeure.
* errors caused by scheduled downtime (maintenance, etc.)
* regular maintenance/parching/security of the operating Software, databases and other environment software in customer's cloud environment

ALERT Managed Services covers support on standard functionality of the Software. It does not include the provision of customization advice or consulting services out of the implemented modules.

4. **Software release or upgrades**

AE can upgrade/patch the Software anytime. However, Alert TSO would notify the customer contact person in advance about the upgrade and potential downtime window. Required Software version release notes can be found at AE community portal <https://community.alertenterprise.com/>

5. **SERVICE COVERAGE AND EXCLUSIONS**

**Table 5A: General Services Coverage**

|  |  |
| --- | --- |
| **Type** | **Service Requests** |
| **Configuration Changes** | * Label / Layout changes * Report changes * User Permissions * Role assignments * Membership / Group changes * Branding Logo changes |
| **Security Upgrades**  **Version upgrades** | * PACS or other version Upgrades * SSO or Java/Browser Upgrades * DevOps Service Requests |
| **Analytics** | * New ad-hoc Reports / Dashboards for available data in Alert Schema for live use cases |
| **Administrative Tasks** | * Ownership changes * Notification Templates * Provisioning Mapping |

**Managed Services Exclusions (Out of scope Items)**

ALERT Managed Services covers support on standard functionality of the Software. It does not include the provision of customization or consulting services outside the scope of subscription. All such requests are analyzed and processed as per the procedures outlined in point 2.C of this document.

**SCHEDULE 2**

##### FORM OF ORDER SCHEDULE

|  |  |  |
| --- | --- | --- |
| **CUSTOMER:** |  | |
| ADDRESS: |  | |
| CITY/STATE/ZIP: |  | |
|  |  | |
| STATE OF INCORPORATION: |  | |
|  |  | |
| TELEPHONE NUMBER: |  | |
| FAX NUMBER: |  | |
| AGREEMENT TO BE RETURNED TO: |  | Email: |
| INTERNAL TECHNICAL REPRESENTATIVE: |  | Email: |
|  |  |  |

INITIAL SUBSCRIPTION TERM: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

INITIAL MANAGED SERVICES TERM:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Service Description:

Number of Identities:

Number of Lobbies:

Number of Servers:

Annual Fees (in US Dollars):

Customer’s Cloud Hosting Platform:

Other Notes:

Additional licenses for third-party Software features:

Authorized Facilities:

**ALERTENTERPRISE, INC. CUSTOMER:**

By: By:

Printed: Printed:

Title: Title:

Order Effective Date: Date:

**By executing this Order Schedule and not indicating above that a separate purchase order is required, Customer agrees that a separate purchase order is not required for this transaction.**