



3740 W. 25<sup>th</sup> Avenue, Schiller Park, IL 60176

Phone: (312)722-6661

www.alertgpsinc.com

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the company named above (the "Company", "We", "Us") and the "Customer" (defined as the Customer Name herein below). Company agrees to provide, or cause to be provided, the Electronic Logbook Services ("Services").

Customer Name (including any trade or D/B/A name): \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Email: \_\_\_\_\_

**ELD Device and Service Fees**

ELD Black Box Quantity: \_\_\_\_\_

ELD Black Box Cost: \$150 (Quantity of 5 or more) or \$199 (Quantity under 5)

Service Plan Rate (per each driver/ per month): \$20

Total: \_\_\_\_\_

Payment Information: \_\_\_\_\_

**AUTHORIZATION**

**BY SIGNING BELOW, YOU ARE REPRESENTING TO ALERT GPS INC. THAT YOU HAVE READ AND FULLY UNDERSTAND ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREE TO ABIDE BY ALL SUCH TERMS AND CONDITIONS. ANY NEW UNITS WILL BE BOUND BY THIS AGREEMENT STARTING UPON THEIR RESPECTIVE DATE OF ACTIVATION.**

Customer Name (Print) : \_\_\_\_\_

Customer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Notes: \_\_\_\_\_

THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU THE "CUSTOMER." PLEASE READ IT CAREFULLY.

By using our Services, you agree to be bound by these Terms, with your agreement being further specified in Section 2. Please feel free to contact us with any questions at [info@alertgpsinc.com](mailto:info@alertgpsinc.com).

## **1. Description of Service**

1.1. The "Service(s)" means Alert Gps Inc. electronic logs and fleet management software (including the Site, our mobile device application ("**App**"), and any software embedded in the Electronic Logging Device) ("**Software**"), the hardware (including the Electronic Logging Device, cables, and accessories) ("**Hardware**"), the Services, and all of Our Content (as defined below). The Service does not include Your Data (as defined below) or any software application or service that is provided by you or a third party, which you use in connection with the Service, whether or not Alert Gps Inc. designates them as official integrations (each a "**Non-Alert Gps Inc. Product**"). Any modifications and new features added to the Service are also subject to these Terms. All rights, title, and interest in and to the Service and its components (including all intellectual property rights) will remain with and belong exclusively to Alert Gps Inc., including the rights to any text, graphics, images, music, software, audio, video, documents, works of authorship of any kind, de-identified and aggregated data collected by the Services, and information or other materials that are posted, generated, provided or otherwise made available by us through the Services ("**Our Content**").

## **2. Agreement to Terms**

2.1. BY USING OUR SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS INCLUDING ANY POLICIES OR OTHER TERMS REFERENCED IN OR INCORPORATED BY THESE TERMS. BY ACCEPTING THIS AGREEMENT, SIGNING UP FOR AN ACCOUNT (AS DEFINED BELOW), YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

## **3. Your Access and Use of the Services**

3.1. You may access and use the Services only for lawful, authorized purposes and you shall not misuse the Services in any manner (as determined by Alert Gps Inc. in its sole discretion). You shall comply with any codes of conduct, policies, storage limitations, or other notices that Alert Gps Inc. provides you or publishes in connection with the Services from time to time, but if any of those policies materially change the Terms, we will provide you with reasonable notice.

3.2. Any Software or Hardware or any of Our Content that may be made available by or on behalf of Alert Gps Inc. in connection with the Service contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Subject to these Terms, Alert Gps Inc. only grants you a personal, non-sub-licensable, non-exclusive, and revocable license to use the object code of any Software solely in connection with the Service. Any rights not expressly granted herein are reserved.

3.3. Subject to your compliance with these Terms, Alert Gps Inc. grants you a limited, non-exclusive, non-transferable, non-sub-licensable, and revocable license to download and install a copy of the App on a mobile device or computer that you own or control and to run such copy of the App. Alert Gps Inc. reserves all rights in and to the App not expressly granted to you under these Terms. See Section 14 for further information.

3.4. Subject to the observance by you of these Terms, we hereby grant to you a non-exclusive, perpetual, worldwide, non-transferable, limited license to use the Licensed Property solely for the purpose of utilizing the Alert Gps Inc. software (the "License"). Any use of the Licensed Property not expressly permitted by these Terms is prohibited.

3.5. The License granted above is limited to the Licensed Property. It is your responsibility to evaluate whether licenses to other products or software are necessary or desirable in order to utilize the License granted herein. We make no representations or warranties with regard to the necessity of licenses to other products or software.

3.6. You may not share your Account information with, or allow access to your Account by, any third party. You are solely responsible for all activity that occurs under your access credentials, whether or not a third party accesses your Account.

3.7. You may allow other users, e.g. employees, independent contractors, and other third parties, ("**End Users**") to access the Services in accordance with these Terms. To the extent that you create any Accounts for other users of the Services, direct us

to create any Accounts for End Users, or allow End Users to access the Services, you are responsible for all End Users' activity and ensuring that they are in compliance with these Terms.

3.8. To the extent that you allow End Users to access the Services or create, or direct us to create, any Accounts for other users, you are responsible for (i) maintaining the confidentiality of usernames and passwords, (ii) managing access to End User Accounts and other Accounts which you create, and (iii) ensuring that all End Users and users of other Accounts which you create are in compliance with these Terms.

3.9. To the extent that you allow End Users to use the Hardware, you are solely responsible for such End Users' use of the Hardware, including any damage to or misuse of such Hardware.

3.10. You agree to prevent any unauthorized access or use by End Users or other users of Accounts and terminate any unauthorized use of or access to the Services.

3.11. You may not sell, resell, or lease the Services.

3.12. You shall promptly notify Alert Gps Inc., if you learn of a security breach related to the Service.

3.13. You assume sole responsibility for your driving logs and for complying with all state and federal regulation including, but not limited to, FMCSA Hours of Service regulations.

#### **4. Your Data, Your Privacy, Your Ownership of Your Data, and Licenses for Our Use of Your Data**

4.1. Alert Gps Inc. takes the privacy of its users very seriously.

4.2. "Your Data" means any data and content you create, post, upload, transmit, or otherwise make available via the Services (which may include data you elect to import from Non-Alert Gps Inc. Products that you use). "Your Data" includes logs you create, location coordinates that are collected, messages you send, documents you upload, profile information, and anything else you enter or upload into the Service. Alert Gps Inc. will make commercially reasonable efforts to ensure that all facilities used to store and process Your Data meet a high standard of security.

4.3. Your acceptance of these Terms does not grant us full ownership of all of Your Data. As between Alert Gps Inc. and you, you are only granting us the rights and licenses necessary to provide our Services to you and any other services for which you have signed up through any of our resellers, business partners, or affiliated businesses. In order for us to provide the Services to you, we need to be able to transmit, store, and copy Your Data in order to display it to you and to those with whom you share it, to index it, so you are able to search it, to make backups to prevent data loss, to send your submissions, and messages through our platform, and so on.

For example, if you submit documents or send messages to a Fleet User, you are granting us a perpetual, sublicensable, irrevocable, and worldwide license for us to transform, modify, reproduce, display, perform, and distribute such documents and messages for you and the Fleet User's use of the Services.

4.4. Your acceptance of these Terms gives us the permission to do so and grants us any such rights and licenses necessary to provide the Service to you, and any other services or products for which you have signed up through any of our resellers, business partners, or affiliated businesses. For example, if you have agreed to share any of Your Data, or any other data we collect in connection with your use of the Services, with one of our partners or affiliates or other third party, you grant us the rights and licenses to share or deliver such data. This permission includes allowing us to use third-party service providers (such as Verizon Wireless) in the operation and administration of the Service and the rights granted to us are extended to these third parties to the degree necessary in order for the Service to be provided.

#### **5. System Backup**

5.1. To comply with commercial motor vehicle driver hours of service regulations, 49 CFR 395.1 et seq., you must regularly backup your computer systems and store all Content on separate media, including data from the Alert Gps Inc. site, located thereon. You are responsible for adequately protecting and backing up data or equipment used in connection with or to access Site or the Functions. Subject to force majeure and any other matter outside our control, we will use commercially reasonable efforts to maintain a copy of your records for six months after termination of the Term. Contingent on your being current on

all financial obligations to us, you shall have the right to access, retrieve, and copy such information during the six-month period. At any time after the expiration of the six-month period, you acknowledge and agree that the Company can delete some or all of the Content, including data from the Alert Gps Inc. site, without notice to you.

## **6. Limitations on Services and Third-Party Relationships**

6.1. Alert Gps Inc. is not a party to any relationships or agreements between you and any third parties for the performance of any duties between the parties, and does not have control over and disclaims all liability for the quality, timing, legality, failure to provide, or any other aspect whatsoever of any professional duties performed by you or other users of the Services. Alert Gps Inc. acts only as an interface to facilitate -- not to direct or control -- communications between users of Alert Gps Inc.'s Services.

6.2. If you authorize a third party to receive Your Data, we may provide Your Data to a third party. If we have an agreement with such third party to market the Services or otherwise provide services or products to you, either jointly or separately, we may rely on a representation from that third party that you have authorized such third party to receive Your Data.

For clarification purposes, you grant us the necessary licenses to Your Data for us to create aggregated and de-identified data for our use in providing the Services and otherwise. Notwithstanding anything else in these Terms, we may use and sell such aggregated and de-identified data, which is compiled from our users, and does not directly identify you, for any purpose we see fit.

6.3. You are solely responsible for your conduct (including by and between all users), the content of Your Data, and all communications with others while using the Services. You represent and warrant that you own all Your Data or you have all rights that are necessary to grant us the license rights to Your Data under these Terms. You also represent and warrant that neither Your Data, nor your use and provision of Your Data, nor any use of Your Data by Alert Gps Inc. on or through the Services will infringe, misappropriate, or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation. We are not responsible for the accuracy, appropriateness, or legality of Your Data or any other information you and your users may be able to access by using the Services. Should you be in violation of these Terms, we have the right to remove any of Your Data causing such violation.

6.4. The Services provide features that allow you and your End Users to share Your Data and other materials with others. When you choose to share Your Data through our Services, you are granting us the necessary rights and licenses to do so. Please consider carefully what you allow to be shared.

## **7. Who May Use the Services**

7.1. You may use the Services only if you are 18 years or older and capable of forming a binding contract with Alert Gps Inc. and are not barred from using the Services under applicable law.

7.2. If you want to access and use the Services, you'll have to create an account ("Account"). You will need to complete this agreement. It's important that you provide us with accurate, complete, and up-to-date information for your Account and you agree to update such information to keep it accurate, complete, and up-to-date. If you don't, we reserve the right to suspend or terminate your Account. You agree that you will not disclose your Account password to anyone and you'll notify us immediately of any unauthorized use of your Account. You are responsible for all activities that occur under your Account, whether or not you know about them.

7.3. You are solely responsible for your interactions with other users of the Services. You are solely responsible for, and will exercise caution, discretion, common sense, and judgment in using the Services. Neither Alert Gps Inc. nor its affiliates or licensors is responsible for the conduct of any user of Alert Gps Inc.'s Services. Your use of the Services and your use of Your Data in connection with the Services and performance of and participation in any professional services is at your sole risk and discretion and that Alert Gps Inc. hereby disclaims any and all liability to you or any third party relating thereto.

## **8. Warnings and Awareness About Connections Between Drivers and Companies**

8.1. The Services enable a commercial motor vehicle driver ("**Driver**") to connect directly with a motor carrier ("**Company**"), allowing Drivers to automatically share their driving logs, documents, location information, and other data ("**Driver Data**") with the Company. When Drivers connect with a Company through the Services, the Company's employees,

and other third parties, who are also connected to that Company ("Fleet Users") may access Driver Data for all Drivers, who are connected to that same Company.

8.2. If a Driver connects with a Company, the Driver should be aware that all the Driver's Data will be automatically shared with that Company and its Fleet Users. Please consider carefully the parties with whom you choose to connect with and what information you choose to share. Alert Gps Inc.'s role in this process is solely to provide the technology and platform that enables these Services.

## **9. Payment**

9.1. Terms of payment are within our sole discretion and, unless otherwise agreed by us in writing, payment must be received by us before our acceptance of an order. As of the date of these Terms, we accept checks, Visa, Mastercard, American Express, and debit cards for purchases, but may change acceptable forms of payment from time to time without notice to you. You represent and warrant that (i) the credit card information you supply to us is true, correct, and complete, (ii) you are duly authorized to use such credit card for the purchase, (iii) charges incurred by you will be honored by your credit card company, and (iv) you agree that you will pay charges incurred by you at the posted prices, including shipping and handling charges and all applicable taxes, if any, regardless of the amount quoted on the Site at the time of your order. Nevertheless, in the event the amount quoted is different from the actual price, we will make commercially reasonable efforts to notify you at the time the charge or within a reasonable time thereof.

Invoices are due and payable within the time stated on your invoice. We may charge a late payment penalty of 1.5% per month on undisputed amounts, or the maximum rate permitted by law, whichever is less. Without waiving any of our other rights or remedies, we may refuse additional orders and suspend any services until all overdue amounts are paid in full.

All services must be paid in advance, provided that payment for a subscription will be due in accordance with the payment terms of the subscription period, as specified in this agreement.

9.2. **Pricing and Payments.** Upon acceptance of your agreement by Alert Gps Inc, you agree to pay Alert Gps Inc. in accordance with the terms set forth in this Agreement, and you authorize Alert Gps Inc. to bill your Payment Method in advance on a periodic basis in accordance with such terms. Please be aware that the pricing for the Services will be governed by the terms in this agreement, upon acceptance by Alert Gps Inc.

9.3. **Payment Method.** The terms of your payment will be based on your Payment Method and may be determined by agreements between you and the financial institution, credit card issuer, or other provider of your chosen Payment Method. If we do not receive payment from you, you agree to pay all amounts due on your Billing Account upon demand.

9.4. **Recurring Billing.** Some of the Services may consist of an initial period, for which there is a one-time charge or proration of charges, followed by recurring period charges as agreed to by you. By choosing a recurring payment plan, you acknowledge that such Services have an initial and recurring payment feature and you accept responsibility for all recurring charges prior to cancellation. WE MAY SUBMIT PERIODIC CHARGES (E.G., MONTHLY) WITHOUT FURTHER AUTHORIZATION FROM YOU, UNTIL YOU PROVIDE PRIOR NOTICE (RECEIPT OF WHICH IS CONFIRMED BY US) THAT YOU HAVE TERMINATED THIS AUTHORIZATION OR WISH TO CHANGE YOUR PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE WE REASONABLY COULD ACT. TO TERMINATE YOUR AUTHORIZATION OR CHANGE YOUR PAYMENT METHOD, EMAIL [INFO@ALERTGPSINC.COM](mailto:INFO@ALERTGPSINC.COM).

9.5. **AUTO-RENEWAL FOR SERVICES.** Unless you opt out of auto-renewal, which can be done by emailing us at [info@alertgpsinc.com](mailto:info@alertgpsinc.com) or by calling us at (312)722-6661, any Services you have signed up for will be automatically extended for successive renewal periods of the same duration as the subscription term originally selected, at the then-current non-promotional rate. If you terminate a Service, you may use your subscription until the end of your then-current term; your subscription will not be renewed after your then-current term expires. However, you won't be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period.

9.6. **Change in Amount Authorized.** You agree that we may accumulate charges incurred and submit them as one or more aggregate charges during or at the end of each billing cycle. If the amount to be charged to your Billing Account varies from the amount you preauthorized, due to you adding users or vehicles, you agree to pay all charges. Any additional vehicles or users will be bound by the terms of this agreement and contract terms will commence upon the date of their respective activation.

9.7. **Billing Disputes.** If you dispute any charges you must let Alert Gps Inc. know within sixty (60) days after the date that Alert Gps Inc. invoices you. All amounts paid are non-refundable and we reserve the right to change our prices in the future. Alert Gps Inc. may choose to bill you through an invoice, in which case, full payment for invoices issued must be received by the date specified on the invoice. Past due invoices are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.

9.8. **Taxes.** You are responsible to pay any and all taxes that we may be required to collect or pay based on providing the Services other than taxes based on our net income.

9.9. **Discontinuation of Services.** If you choose to discontinue, cancel, or terminate any Services for which you have agreed to before the end of the term agreed to in this Agreement, Alert Gps Inc. shall have the right to immediately charge the Payment Method associated with your Account for the penalty due with respect to the agreed upon Term of your Services.

9.10. **Reaffirmation of Authorization.** Your non-termination or continued use of any Service reaffirms that we are authorized to charge your Payment Method for that Service. We may submit those charges for payment and you will be responsible for such charges. This does not waive our right to seek payment directly from you. Your charges may be payable in advance, in arrears, per usage, or as otherwise described when you initially selected to use the Service.

## **10. Termination**

10.1. These Terms will continue in full force and effect unless and until your Account or these Terms are terminated as described herein.

10.2. We may terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you. You may cancel your Account at any time by sending an email to us at [info@alertgpsinc.com](mailto:info@alertgpsinc.com). Early termination fees will be assessed for accounts that breach contract terms. Upon any termination, discontinuation, or cancellation of Services or your Account, all provisions of the Terms that should, by their nature, survive termination of these Terms will survive termination. Such provisions include, but are not limited to: Your Data, your privacy, your ownership of Your Data, and licenses for our use of Your Data; Indemnity; Limitation of Liability; Arbitration Agreement, Dispute Resolution and Release; General Terms; and provisions related to ownership.

10.3. All accrued rights to payment shall survive termination of the Terms.

10.4. Notwithstanding Section 10.2, please be aware that once your Account has been terminated, we no longer have any obligation to maintain or provide Your Data, and we may delete or destroy all copies of Your Data in our possession or control, unless legally prohibited.

## **11. Terms Related to Hardware Devices**

11.1. **Delivery** Alert Gps Inc. is not liable for any delayed or late delivery of the Hardware.

11.2. **Installation.** You are solely responsible for installing the Hardware in accordance with Alert Gps Inc.'s instructions. You acknowledge that you're aware that in order to install the Hardware you may choose to drill holes in your vehicle, and you agree that Alert Gps Inc. is not liable for any cost, expense, or damages arising from the installation of the Hardware.

### **11.3. Terms Related to Leased Hardware**

(i) **Ownership of the Hardware.** Notwithstanding delivery of the Hardware to you and your license to use the Services, unless you have purchased the Hardware in full from Alert Gps Inc., Alert Gps Inc. retains ownership of the Hardware and the software contained therein.

(ii) **Return of Hardware.** At the end of the initial term specified on this Agreement or as such term is extended by further agreement between you and Alert Gps Inc. ("**Term**"), or if the Services have been terminated for any other reason, you must, at your own expense, uninstall, package, and return the Hardware to Alert Gps Inc. within 30 days of the end of the Term, in reasonable condition allowing for wear and tear. If we haven't received the Hardware within 30 days of termination of the Services, or if the Hardware is returned in damaged condition, we will charge you \$200 per unit for unreturned or damaged



Hardware, so please ensure that you promptly return your Hardware. We reserve the right to charge these fees to the Payment Method that you have on file with us.

(iii) **Your Responsibility for the Hardware.** Except for with respect to our gross negligence or willful misconduct, you are responsible for the loss of, damage to, or the entire cost of any necessary service or repair of the Hardware. You have no right to sell, give away, transfer, pledge, mortgage, alter, or tamper with the Hardware.

(iv) **Material Defects Warranty.** If you report to us, in writing, a material defect in the Hardware or the Services, we will run a diagnostic test of the Hardware and Services. If we determine that there is a material defect in the Hardware or the Services, we will send you replacement Hardware or work to resolve any other issues with the Services. Within 30 days of receipt of the replacement Hardware you must, at your own expense, uninstall, package, and return the defective Hardware to Alert Gps Inc. You agree that the only remedy for such a defect is your right to a Material Defects Replacement as provided in this paragraph.

(v) **Limitations on the Material Defects Replacement.** The Material Defects Replacement policy is null and void in the event of (a) any alteration, modification or special configuration or installation or deinstallation of the Hardware or the embedded software without following Alert Gps Inc.'s instructions; (b) accidents affecting the Hardware, misuse, tampering with, abuse, neglect or damage the Hardware; (c) use the Services not in the ordinary course of your business operations; (d) connecting the Hardware to an improper voltage supply; (e) water, weather, or physical damage; or (f) use of the Hardware with accessories and/or devices, which are not approved by Alert Gps Inc.

11.4. **Customer Service.** In the event the Hardware does not operate, please contact us by emailing us at [info@alertgpsinc.com](mailto:info@alertgpsinc.com) or by calling us at (312)722-6661.

## **12. Limited Warranty; Disclaimers**

12.1. We warrant that during the applicable subscription term the Services and Hardware will be free of defects in materials and workmanship under normal use and service and shall substantially conform with instruction manuals, user guides, and other information provided by Alert Gps Inc. or posted to its website, provided that such warranty is limited by these Terms; provided, however, that the remedies provided for in this Section and the Hardware Warranty, if applicable to you, are the only remedies available for defective Hardware and/or Services.

12.2. The Hardware connects to the battery of your vehicle and consumes a small drain on your vehicle's battery, which may adversely affect your vehicle while not in operation. Alert Gps Inc. is not liable for any consequences of the battery drain associated with use of the Hardware or the Services.

12.3. The warranties provided herein and any remedies for such warranties are null and void in the event of (a) any alteration, modification, or special configuration or installation or deinstallation of the Hardware, the embedded software or the Software without following Alert Gps Inc.'s instructions; (b) accidents affecting the Hardware, misuse, tampering with, abuse, neglect, or damage to the Hardware; (c) use of the Services not in the ordinary course of your business operations; (d) connecting the Hardware to an improper voltage supply; (e) water, weather, or physical damage; or (f) use of the Hardware with accessories and/or devices which are not approved by Alert Gps Inc.

12.4. TO THE MAXIMUM EXTENT ALLOWABLE BY LAW AND EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND THE HARDWARE WARRANTY, IF APPLICABLE TO YOU, THE SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. ALERT GPS INC. EXPLICITLY DISCLAIMS ALL LIABILITY FOR ANY ACT OR OMISSION OF ANY DRIVER, FLEET USER, COMPANY, OR OTHER THIRD PARTY. Except with respect to the limited warranty contained herein and in the Hardware Warranty, if applicable to you, we make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness, or reliability of any of the Services or anything shared by any users of the Services. We make no guarantee that services provided will be compatible with all third party devices or products.

## **13. General Prohibitions**

13.1. IT IS STRICTLY FORBIDDEN TO USE THE ALERT GPS APP WHILE DRIVING.

13.2. You further agree not to do any of the following:

13.2.1. Post, upload, publish, submit, or transmit anything that: (i) infringes, misappropriates, or violates a third party's patent, copyright, trademark, trade secret, moral rights, or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading, or deceptive; (iv) is defamatory, obscene, pornographic, vulgar, or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment, or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances;

13.2.2. Use, display, mirror, or frame the Services, or any individual element within the Services, Alert Gps Inc.'s name, any Alert Gps Inc. trademark, logo, or other proprietary information, or the layout and design of any page or form contained on a page, without Alert Gps Inc.'s express written consent;

13.2.3. Access, tamper with, or use non-public areas of the Services, Alert Gps Inc.'s computer systems, or the technical delivery systems of Alert Gps Inc.'s providers;

13.2.4. Attempt to probe, scan, or test the vulnerability of any Alert Gps Inc. system or network or breach any security or authentication measures;

13.2.5. Avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Alert Gps Inc. or any of Alert Gps Inc.'s providers or any other third party (including another user) to protect the Services;

13.2.6. Attempt to access or search the Services or download any Software or Our Content from the Services through the use of any engine, software, tool, agent, device, or mechanism (including spiders, robots, crawlers, data mining tools, or the like) other than the software and/or search agents provided by Alert Gps Inc. or other generally available third party web browsers;

13.2.7. Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters, or other form of solicitation;

13.2.8. Use any meta tags or other hidden text or metadata utilizing an Alert Gps Inc. trademark, logo, URL, or product name without Alert Gps Inc.'s express written consent;

11.2.9. Use the Services for the benefit of any third party or in any manner not permitted by these Terms;

13.2.10. Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services to send altered, deceptive, or false source-identifying information;

13.2.11. Attempt to decipher, decompile, disassemble, or reverse engineer any of the software used to provide the Services;

13.2.12. Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;

13.2.13. Collect or store any personally identifiable information from the Services from other users of the Services without their express permission;

13.2.14. Impersonate or misrepresent your affiliation with any person or entity;

13.2.15. Violate any applicable law or regulation; or

13.2.16. Encourage or enable any other individual to do any of the foregoing.



13.3. Although we're not obligated to monitor access to or use of the Services or to review or edit any of Services or Your Data, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms, or to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable access to any of our content or Your Data, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider any of our content or Your Data to be objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

#### **14. Additional Terms for Google Play Store and Apple App Store Apps**

These Terms apply to your use of all the Services, including the applications available via the Google, Inc. ("Google Play") App Store and Apple App Store (each an "**App Store App**"), but the following additional terms also apply to App Store Apps:

- (i) Both you and Alert Gps Inc. acknowledge that the Terms are concluded between you and Alert Gps Inc. only, and not with Google or Apple, and that neither Google nor Apple is responsible for App Store Apps or the Content;
- (ii) The App Store Apps are licensed to you on a limited, non-exclusive, non-transferable, non-sublicensable basis, solely to be used in connection with the Services for your private, personal, non-commercial use, subject to all the terms and conditions of these Terms as they are applicable to the Services;
- (iii) You will only use the App Store Apps in connection with a device that you own or control;
- (iv) You acknowledge and agree that neither Google nor Apple have an obligation to furnish any maintenance and support services with respect to the App Store Apps;
- (v) In the event of any failure of the App Store Apps to conform to any applicable warranty, including those implied by law, you may notify Google or Apple of such failure; upon notification, Google's or Apple's sole warranty obligation to you will be to refund to you the purchase price, if any, of the App Store App;
- (vi) You acknowledge and agree that Alert Gps Inc., and not Google nor Apple, is responsible for addressing any claims you or any third party may have in relation to the App Store App;
- (vii) You acknowledge and agree that, in the event of any third party claim that the App Store App or your possession and use of the App Store App infringes that third party's intellectual property rights, Alert Gps Inc., and not Google nor Apple, will be responsible for the investigation, defense, settlement, and discharge of any such infringement claim;
- (viii) You represent and warrant that you are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that you are not listed on any U.S. Government list of prohibited or restricted parties;
- (ix) Both you and Alert Gps Inc. acknowledge and agree that, in your use of the App Store App, you will comply with any applicable third party terms of agreement which may affect or be affected by such use; and
- (x) Both you and Alert Gps Inc. acknowledge and agree that Google and Apple as well as their respective subsidiaries are third party beneficiaries of these Terms, and that upon your acceptance of these Terms, Google and Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as the third party beneficiary hereof.

#### **15. Arbitration Agreement, Dispute Resolution and Releases**

PLEASE READ THIS SECTION CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS AND YOUR RIGHT TO FILE A LAWSUIT IN COURT, YOUR RIGHT TO A JURY TRIAL AND YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION.

Unless otherwise agreed to by both parties in writing, you and Alert Gps Inc. agree that, in order to expedite and control the cost of any disputes, any legal or equitable claim arising out of or relating in any way to your use of the Services, or any use

of the Services by a user to whom you provide access to your Account, or arising out of or relating to these Terms and the Hardware Warranty ("**Claim**") will be resolved as follows:

15.1. **Informal Dispute Resolution.** Except with respect to Claims listed in Section 15.6, below, you and Alert Gps Inc. agree to attempt to resolve any disputes informally, before initiating any arbitration or other formal proceedings, and neither of us may start an arbitration or other formal proceeding for at least 30 days after you contact us or we contact you regarding any dispute ("**Informal Negotiation Period**").

15.2. **Agreement to Arbitrate.** If such a dispute is not resolved within 30 days, you or Alert Gps Inc. may initiate a formal arbitration proceeding in accordance with the terms in this section. Except with respect to Claims listed in Section 15.6, below, you and Alert Gps Inc. agree to resolve any Claims relating to or arising from the Services, these Terms or the Hardware Warranty through final and binding arbitration in accordance with the terms in this section.

15.3. **Arbitration Notice.** If either you or Alert Gps Inc. chooses to start an arbitration proceeding, the party initiating the proceeding will send a notice of its Claim ("**Arbitration Notice**") to the other party. You will send your Arbitration Notice by email to [info@alertgpsinc.com](mailto:info@alertgpsinc.com) and by U.S. mail to:

**Alert Gps Inc.**

3740 W. 25<sup>th</sup> Ave.

Schiller Park, IL 60176

15.4. **Arbitration Procedures.** Any arbitration proceedings between you and us will be conducted under the commercial rules then in effect for the American Arbitration Association ("AAA"), except with respect to the provision of this agreement which bars class actions in Section 15.8. The award rendered by the arbitrator(s) shall include costs of arbitration, reasonable costs of expert, and other witness and reasonable attorneys' fees. For claims less than \$10,000, we will advance to you AAA's filing fees; provided, however, that such fees must be repaid to Alert Gps Inc., if Alert Gps Inc. prevails in the arbitration. Please see this link for the AAA's current rules and procedures or contact the AAA at 1-800-778-7879.

15.5. **Non-Appearance-Based Arbitration Option.** Except with respect to the exceptions to arbitration below in Section 15.6, for Claims where the total amount of the award sought in arbitration is less than \$10,000, the party seeking the award may choose non-appearance-based arbitration. If non-appearance-based arbitration is elected, the arbitration will be conducted online, by telephone, and/or solely based on written submissions to the arbitrator. The specific manner shall be chosen by the party initiating arbitration. Non-appearance-based arbitration involves no personal appearances by parties or witnesses unless otherwise mutually agreed to by the parties.

15.6. Exceptions to the Agreement to Arbitrate.

15.6.1. Notwithstanding the foregoing, the Arbitration Notice requirement and the Informal Negotiation Period do not apply to either law suits solely for injunctive relief to stop unauthorized use of the Services or lawsuits concerning copyrights, trademarks, moral rights, patents, trade secrets, claims of piracy, or unauthorized use of the Services.

15.6.2. Either you or Alert Gps Inc. may assert claims which qualify for small claims court in Chicago, IL.

15.7. **Opting Out of the Agreement to Arbitrate.** You have the right to opt-out and not be bound by the binding agreement to arbitrate provided in these Terms by sending written notice of your decision to opt-out to [info@alertgpsinc.com](mailto:info@alertgpsinc.com) AND by U.S. Mail to: Alert Gps Inc., 3740 W. 25<sup>th</sup> Avenue, Schiller Park, IL 60176. In order for your opting out to be valid, your notice must be sent within 30 days of first using the Services.

15.8. **No Class Actions.** Unless you and Alert Gps Inc. agree otherwise, you may only resolve disputes with us on an individual basis. Class actions, class arbitrations, private attorney general actions, and consolidations with other Claims are not allowed. Neither you nor Alert Gps Inc. may consolidate a Claim or Claims as a plaintiff or a class member in a class action, a consolidated action, or a representative action.

15.9. **Consent to Jurisdiction.** If the agreement to arbitrate provided for in these Terms is found not to apply to you or your Claim, or if you or Alert Gps Inc. challenges any arbitration award or seeks to have an arbitration award enforced, you and Alert Gps Inc. agree that any judicial proceeding will be brought in the federal or state courts located in Chicago, IL. You and Alert Gps Inc. consent and agree to both venue and personal jurisdiction in the federal and state courts located in Chicago, IL.

15.10. **Release from Third-Party Claims.** Because Alert Gps Inc. is not party to any agreements between you and any third parties or involved in the completion of any associated professional services, in the event that you have a dispute with one or more other Drivers, Fleet Users, or Companies or other third parties, as applicable (each, an "**Other Party**"), you agree to address such dispute directly with the Other Party in question and you release Alert Gps Inc. (and our officers, directors, agents, investors, subsidiaries, and employees from any and all claims, demands, or damages (actual or consequential)) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such dispute.

## **16. Limitation of Liability**

16.1. NEITHER ALERT GPS INC. NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES OR CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE, OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ALERT GPS INC. HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

16.2. TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, ALERT GPS INC. DOES NOT ACCEPT ANY LIABILITY WITH RESPECT TO THE QUALITY OR FITNESS OF ANY PROFESSIONAL SERVICES PERFORMED BY USERS OF OUR SERVICES IN CONNECTION WITH THEIR USE OF THE SERVICES. ALERT GPS INC. WILL NOT BE LIABLE TO YOU UNDER ANY CIRCUMSTANCES ARISING OUT OF THE MISUSE OF YOUR USER CONTENT BY THIRD PARTIES INCLUDING, WITHOUT LIMITATION, OTHER USERS WITH WHOM YOU HAVE CONNECTED THROUGH THE SERVICES OR ENTERED INTO AN AGREEMENT IN CONNECTION WITH THE PERFORMANCE OF PROFESSIONAL SERVICES. IN NO EVENT WILL ALERT GPS INC.'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT EXCEED THE GREATER OF (A) ONE HUNDRED DOLLARS (\$100) OR (B), IF YOU HAVE ORDERED SERVICES FROM ALERT GPS INC., THE TOTAL AMOUNT OF FEES RECEIVED BY ALERT GPS INC. FROM YOU FOR THE USE OF SERVICES DURING THE PAST MONTH. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN ALERT GPS INC. AND YOU.

16.3. Any cause of action related to the Services or the Terms must commence within one (1) year after the cause of action arises. Otherwise, such cause of action is barred permanently.

## **17. Indemnity**

17.1. You will indemnify, defend, and hold harmless Alert Gps Inc. and its officers, directors, employees, and agents, from and against, and covenant not to sue them for any claims, disputes, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with (i) your access to or use of the Services or Our Content; (ii) Your Data; (iii) your performance of or participation in professional services in connection with your use of the Services or Our Content; or (iv) your violation of these Terms. Alert Gps Inc. reserves the right to control and conduct the defense of any matter subject to indemnification under these Terms. If Alert Gps Inc. decides to control or conduct any such defense, you agree to cooperate with Alert Gps Inc.'s requests in assisting Alert Gps Inc.'s defense of such matters.

## **18. General Terms**

18.1. **Integration.** These Terms constitute the entire and exclusive understanding and agreement between Alert Gps Inc. and you regarding the Services, and supersede and replace any and all prior oral or written understandings or agreements between Alert Gps Inc. and you regarding the Services. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

18.2. **Assignment.** You may not assign or transfer these Terms, by operation of law or otherwise, without Alert Gps Inc.'s prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect. Alert Gps Inc. may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors, and permitted assigns.

18.3. **Governing Law.** The Terms and the relationship between you and Alert Gps Inc. shall be governed by the laws of the State of Illinois.

18.4. **Notices.** Any notices or other communications provided by Alert Gps Inc. under these Terms, including those regarding modifications to these Terms, will be given by Alert Gps Inc.: (i) via email; or (ii) by posting to the Site. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

18.5. **Waiver and Severability.** Alert Gps Inc.'s failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Alert Gps Inc. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If any of these Terms are unenforceable, it will not affect the enforceability of the rest of the Terms.

18.6. **Acknowledgement.** You understand and agree that:

(i) The Service is an information tool only and is not a substitute for competent management and oversight of your fleet, transportation system, and personnel;

(ii) The Service depends upon data being transmitted over the Internet, your network, GPS satellites, and third-party carrier networks, and that we have no control over the functioning of the Internet, your network, GPS satellites, or any carrier's network, and that all such means are necessarily imprecise and prone to variance; and

(iii) You alone are responsible for acquiring and maintaining your fleet, network, Internet access, and your entire physical and technological infrastructure.

## **19. Changes and Modifications to Terms of Service**

19.1. We may modify these Terms at any time, in our sole discretion. If we do so, we will let you know either by posting the modified Terms on the Site or through other communications. It's important that you review the modified Terms, because if you continue to use the Services after we have let you know that the Terms have been modified, you are indicating to us that you agree to be bound by the modified Terms. If you don't agree to be bound by the modified Terms then you may no longer use the Services. Because our Services are evolving over time, we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.