

Terms and Conditions of Use

These Terms and Conditions of Use (“**Terms**”) apply to the purchase by Customer of Licenses for the use of the hosted software known as FleetDefense Developed by AlertDriving® as such software may be modified, updated and revised from time to time (the “**Software**”). This document contains very important information regarding Customer’s rights and obligations, as well as conditions, limitations and exclusions that might apply to Customer. Please read it carefully.

By submitting an Order to Sonic E-Learning Inc. DBA AlertDriving (“**AlertDriving**”) Customer affirms that: (a) Customer has legal capacity to enter into this Agreement, and Customer accepts and agrees to be bound by these Terms; and (b) if the individual who submits the Order is doing so on behalf of an organization, company, or other Person, such individual has the legal authority to bind any such organization, company or Person to these Terms.

AlertDriving will not fulfil any Order submitted by Customer if Customer: (i) does not agree to these Terms; (ii) does not have legal capacity to agree to these Terms; (iii) is prohibited from accessing or using this Website or any of this Website’s contents, products or services by applicable law; or (iv) does not pay the Fees set out in the applicable AlertDriving Invoice when due.

ARTICLE 1- INTERPRETATION

1.01 Definitions

In these Terms, in addition to the terms defined above, the following terms shall have the following meanings:

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

“**Agreement**” means, collectively, these Terms, the Order, the SLA, the Privacy Policy, the Documentation all schedules and exhibits as may be incorporated by reference, and any other attachments executed by the parties in writing, which are hereby incorporated by reference.

“**AlertDriving’s Intellectual Property**” means, collectively, all Software, Documentation, the Website, (including the Look and Feel of the Website), the Domain Name, and all other Intellectual Property used by AlertDriving to perform the Services or for which access is provided to Customer by AlertDriving.

“**Authorized User**” means any individual who is employed by or under a contract of service to Customer, for whom Customer purchases a License to access and use the Software.

“**Billing Information**” means the data that AlertDriving collects and generates concerning: the Software, the number of Licenses issued to Authorized Users and charges for all other Services provided by AlertDriving to Customer.

“**Business Day**” means a day other than a Saturday, a Sunday, or any other day on which the principal chartered banks located in Toronto, Ontario are not open for business.

“**Confidential Information**” means any business or technical information relating to either party, including, but not limited to equipment, software, designs, technology, technical documentation, product or service specifications or strategies, marketing plans, pricing information, financial information, inventions, applications, methodologies and other know-how, and from time to time that is disclosed by a party (the “**Discloser**”) in tangible form, electronic form, oral form, or visual form to the other party

(the “**Recipient**”). The Software, all Billing Information and all aggregated statistical information about Authorized Users’ use of the Software form part of the Confidential Information of AlertDriving. Customer Data form part of the Confidential Information of Customer. Confidential Information does not include any information that the Recipient can demonstrate: (i) was in the public domain at the time of disclosure to it; (ii) was published or otherwise became a part of the public domain, after disclosure to the Recipient, through no fault of its own; (iii) was in the possession of the Recipient at the time of disclosure to it from a third party who had a lawful right to such information and disclosed such information to it, without a breach of duty owed to the Discloser; or (iv) was independently developed by the Recipient without reference to Confidential Information of the Discloser.

“**Confidentiality Period**” means the Term plus a period of (1) one year thereafter.

“**Customer**” means the Person who has submitted an Order to AlertDriving for the purchase of Licenses and any Services.

“**Customer Data**” means all information that Customer or its Authorized Users provide to AlertDriving, or that the Software collects or generates about Authorized Users and potential Authorized Users, including, without limitation, all Personal Information, but excluding any Billing Information and excluding any aggregated statistical information about Authorized Users’ use of the Software.

“**Customer Materials**” means all Customer Data and all drawings, materials, specifications, designs and other content supplied by Customer to AlertDriving for use in connection with the Software and Website.

“**Data Protection Legislation**” means the data protection and privacy laws and regulations applicable to any Personal Information supplied by Customer to AlertDriving.

“**Data Subject**” means an individual natural person to whom Customer Data relate.

“**Documentation**” means such user guides, release notes and/or training manuals concerning the Software in printed or electronic format, which AlertDriving may make available for use with the Software.

“**Domain Name**” means fleetdefense.com and all other domain names owned by AlertDriving or its Affiliates and through which Customer’s Authorized Users may access the Software.

“**Effective Date**” means the date upon which AlertDriving receives payment from Customer for Customer’s initial Order.

“**Fees**” means the License Fees and all other amounts payable by Customer to AlertDriving pursuant to this Agreement.

“**Force Majeure Events**” has the meaning given to it in Section 13.05.

“**Intellectual Property**” means all tangible and intangible intellectual and industrial property created, developed or reduced to practice including, without limitation: software in object code and source code form, compilations of data, computer databases, documentation, reports, studies, abstracts, summaries, specifications, technical information, tools, methodologies, processes, techniques, analytical frameworks, algorithms, formulas, designs, industrial designs, know-how, business methods, confidential information, works of authorship, mask works, integrated circuit topographies, inventions, improvements, models, drawings, products, schemas, prototypes, architectural plans and all other related material.

“**Intellectual Property Right**” means any and all rights, in any jurisdiction, provided under: (a) patent

law; (b) copyright law (including moral rights); (c) trade-mark law (including laws governing trade-marks, trade names and logos); (d) design patent or industrial design law; (e) semi-conductor chip or mask work law; or (f) any other statutory provision (including laws governing domain names) or common law principle (including trade secret law and law relating to information of the same or similar nature and protected in the same or similar way) governing intellectual property, whether registered or unregistered, and including rights in any and all applications and registrations in respect of the foregoing.

“Invoice” has the meaning given to it in Section 2.01.

“Lesson” means a driver training lesson of the Software made available to Authorized Users.

“License” means the revocable, non-exclusive, non-transferable right, without the right to sublicense, for one (1) Authorized User to access and use, through an account provisioned by AlertDriving and activated by the Authorized User, the Software solely for Customer’s internal business purposes in the Territory, subject to the provisions of this Agreement.

“License Fee” means the Fee payable for each License.

“License Limit” means the aggregate number of non-expired Licenses purchased by Customer, as set out all Orders.

“License Term” has the meaning given to it in Section 11.02.

“Look and Feel” means the distinctive and particular elements of graphics, design, organization, presentation, layout, user interface, navigation, trade dress and stylistic convention (including the digital implementations thereof) within the Website and the overall appearance and impression substantially formed by the combination, coordination and interaction of such elements.

“Open Source Software” means any software distributed under a license or other arrangement under which the source code to the software and/or software derived from it is published or otherwise made available so as to permit the use, change, and improvement of the source code and software, and the redistribution thereof in modified or unmodified form pursuant and subject to the terms and conditions of such license or other arrangement.

“Order” means a written request by Customer to AlertDriving for the purchase of Licenses and any other Services requested by Customer.

“Person” means any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, joint venture, body corporate, a government or any department or agency thereof, and a natural person in such person’s capacity as trustee, executor, administrator or other legal representative.

“Personal Information” means information about an identifiable individual, including all **“Personal Data”** as may be defined in the Data Protection Legislation.

“Privacy Policy” means AlertDriving’s privacy policy, available at <https://www.alertdriving.info/privacy-policy>, as amended from time to time.

“Process/Processing”, “Controller”, and “Processor”, (whether such terms are capitalized or are lower case) has the same meaning as in the Data Protection Legislation applicable in the country where the Data Subject of the relevant Customer Data is located.

“Services” means all services rendered by AlertDriving to Customer under this Agreement, including, without limitation, all services described in Article 3 hereof.

“**SLA**” means AlertDriving’s service level agreement, available at <https://www.alertdriving.info/global-delivery-privacy>, as amended from time to time.

“**Term**” has the meaning given to it in Section 11.01.

“**Territory**” means those counties listed in the Order, and their respective territories and possessions, from which the Authorized Users will be accessing the Software.

“**Third-Party Products**” means any product, software, content or service offering that is proprietary to a third party.

“**Virus**” means computer programs or sub-programs that are added, whether intentionally or unintentionally, to the Software and that can disrupt operations of the same or of another computer program, hardware or systems or cause file deletions or file modifications or other effects not part of the functionality of the Software.

“**Website**” means the collection of computer files on the Internet located at the URL: www.alertdriving.com and all underlying websites maintained for Customer and/or its Affiliates by AlertDriving hereunder as updated and revised from time to time. The Website will be accessible from a hyperlink on Customer’s web site and shall provide a Customer-branded user interface to the Software.

1.02 **Headings; Internal References**

The headings used in this Agreement and its division into articles, sections, schedules, and other subdivisions do not affect its interpretation. References in this Agreement to articles, sections, schedules, and other subdivisions are to those parts of this Agreement.

1.03 **Number and Gender**

Unless the context requires otherwise, words importing the singular number include the plural and *vice versa*; words importing gender include all genders.

1.04 **Calculation of Time**

In this Agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. Eastern Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 5:00 p.m. Eastern Time on the next Business Day.

1.05 **Use of the Term “Including”**

Where this Agreement uses the word “including,” it means, “including without limitation,” and where it uses the word “includes,” it means “includes without limitation.”

1.06 **Interpretation of this Agreement**

The parties acknowledge that they have each participated in settling the terms of this Agreement. The parties agree that any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this Agreement.

1.07 **References to Statutes, etc.**

Unless specified otherwise, any reference in this Agreement to a statute includes the regulations, rules, and

policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those regulations, rules, or policies.

ARTICLE 2 – ACCESS AND USE

2.01 Order Process and Provisioning of Licenses

- (a) Upon AlertDriving's receipt of an Order from Customer, AlertDriving will prepare and send to Customer an invoice for the number of Licenses and any Services requested by Customer in the Order (the "**Invoice**"). Upon receipt of payment in full of the Invoice, AlertDriving will commence the onboarding process for Customer's Authorized Users as described below. Customer acknowledges that AlertDriving will not fulfil any Order for which the Invoice has not been paid in full and that AlertDriving may choose not to accept Orders at its sole discretion, even after AlertDriving sends to Customer a confirmation email or Invoice with an Order number and details of the items ordered.
- (b) To register Authorized Users with AlertDriving, Customer shall deliver to AlertDriving an electronic data file, in a format specified by AlertDriving, containing Customer Data required by AlertDriving in respect of each Authorized User to whom a License is to be assigned. Customer shall ensure that all individuals to be registered as Authorized Users of Customer have granted their consent to the transfer of their Personal Information to AlertDriving and to the use of such information by AlertDriving in order to fulfil its obligations under this Agreement. Once AlertDriving has received the electronic data file containing the Customer Data necessary to assign Licenses to Authorized Users, AlertDriving shall provision the Licenses for such Authorized Users and send to each Authorized User an email requesting them to create a username and password for access to and use of the Software. Usernames and passwords cannot be shared or used by more than one Authorized User. Customer will be responsible for the confidentiality and use of all Authorized Users' usernames and passwords. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Software and shall promptly notify AlertDriving of any unauthorized access or use of Software and any loss, theft or unauthorized use of any Authorized User's username and password.
- (c) All use of the Software is subject to the provisions of this Agreement, the Documentation and all applicable laws and regulations. Each License may be revoked for a breach by Customer of any material provision of this Agreement. AlertDriving will not provide a refund for any License once the Software has been accessed through the logon credentials associated with that License.

2.02 License Restrictions

- (a) Customer shall not and permit any other Person to:
 - (i) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code to the Software;
 - (ii) use, reproduce, copy, market, sell, resell, distribute, assign, license, sub-license, lease, timeshare, rent, use in a service bureau, or use in an application service provider or "software as a service" provider environment, or otherwise transfer or exploit any Licenses, the Software or the Website or any part thereof;
 - (iii) make the Licenses, the Software or the Website available to any Person other than its Authorized Users;
 - (iv) use the Licenses, the Software or the Website for the benefit of any Person other than

its Authorized Users;

- (v) interfere in any manner with the operation of the Licenses, the Software, the Website, or any Services, including hosting Services, associated therewith;
- (vi) use the Licenses, the Software, or the Website to create, store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to create, store or transmit material in violation of third-party privacy, copyright, trademark, patent or other Intellectual Property Rights;
- (vii) use the Licenses, the Software, or the Website to create, store or transmit any Viruses;
- (viii) interfere with or disrupt the integrity or performance of the Licenses, the Software, or the Website;
- (ix) attempt to gain unauthorized access to the Licenses, the Software, or the Website, or any systems or networks related to the foregoing;
- (x) permit direct or indirect access to, or sharing or other use of the Licenses, the Software, or the Website in a way that circumvents the License Limit;
- (xi) copy the Licenses, the Software, or the Website or any part, feature, or function of any of them;
- (xii) embed or mirror any part of the Licenses, the Software, or the Website to develop, create, train, improve or build a product or service that competes with, or is similar to, the Licenses, the Software, or the Website or for any other benchmarking or competitive purpose;
- (xiii) access or attempt to access any data that is controlled or provided by any other AlertDriving customer;
- (xiv) duplicate in hard copy or any other format whatsoever, any Documentation delivered in connection with this Agreement, except that, with proper copyright notices, a single copy of the Documentation may be made for each Authorized User;
- (xv) remove, modify or obscure any copyright, trade-mark or other proprietary rights notices that appear as part of the Software or the Website; or
- (xvi) create Internet links to the Website that include log-in information, usernames, passwords, or other sensitive information.

2.03 **Use of the Software**

- (a) Customer remains fully responsible for all use of the Licenses, the Software and the Website by its Authorized Users. Customer shall ensure that all access and use of the Licenses, the Software and the Website by Authorized Users is in compliance with this Agreement. Any action or breach by any of such Authorized Users of this Agreement is deemed to be an action or breach by Customer. Customer agrees to maintain a current list of all Authorized Users authorized to access the Software on behalf of Customer and to notify AlertDriving of changes to such list. In no event will AlertDriving be liable for the foregoing obligations or the failures by Customer to fulfill such obligations.
- (b) Customer shall comply with all applicable local, state, provincial, federal, and foreign laws,

treaties, regulations, and conventions in connection with its use of the Website and the Software, including without limitation those related to privacy, electronic communications and anti-spam legislation. Customer will not transmit any communication to the Website that is unlawful, harassing, libellous, defamatory or threatening. Customer agrees not to access the Software by any means other than through the Website.

- (c) Customer understands that the technical processing and transmission of Customer's communications is fundamentally necessary to use of the Software. Customer acknowledges and understands that Customer's transmission to the Website will involve transmission over the Internet, and over various networks, which are not under the control of AlertDriving. Customer further acknowledges and understands that electronic communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. AlertDriving is not responsible for any electronic communications and/or Customer Data that are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across telecommunications networks, including, but not limited to, the Internet and Customer's local network.
- (d) Third-Party Products that may be made available as part of or with the Software are subject to the applicable third party's terms and conditions. Any Open Source Software made available as part of or with the Software is subject to the terms and conditions of the applicable Open Source Software licenses. All Third-Party Products and Open Source Software are provided "as is" without warranty of any kind.

2.04 **Necessary Equipment**

A high-speed Internet connection is required for proper access to and use of the Software. Customer shall be solely responsible, at its own expense, for acquiring, installing, maintaining, and updating all connectivity equipment, hardware, software, and other equipment as may be necessary for its Authorized Users to connect to, access, and use the Website and Software as permitted by this Agreement. AlertDriving assumes no responsibility for the reliability or performance of any Customer's Internet connections to the Website.

2.05 **Reservation of Rights**

AlertDriving reserves the right to modify the Software and/or Website at its discretion, and to modify features and functionalities available through the Software. All rights to the Licenses, Software, the Website and Documentation not specifically granted herein are expressly reserved to AlertDriving.

ARTICLE 3 – ALERTDRIVING'S OBLIGATIONS

3.01 **Description of Services**

- (a) Upon receipt of payment for the applicable Licenses, AlertDriving shall configure the Software and, upon completion of the configuration, provide access to the Software through the Website to Customer's personnel who have been registered as Authorized Users.
- (b) AlertDriving shall host the Website and employ such security procedures and safeguards, and backup and disaster recovery procedures and facilities with respect to the operation of the Website and Customer Data in accordance with those commercially accepted standards prevailing in the Internet e-commerce industry in North America from time to time throughout the Term. Hosting Services include receiving Customer Data files from Customer, inputting and processing all Customer Data to effect registration of individual Authorized Users (unless a self-registration option is offered by AlertDriving, in which case AlertDriving is not responsible for inputting any Customer data), and issuing electronic confirmation to Customer upon receipt of

Orders for Services. AlertDriving shall use reasonable commercial efforts to comply with the SLA.

- (c) To the extent applicable to Customer, and at no additional charge to Customer, AlertDriving shall provide the basic updates, maintenance enhancements, and fixes to the Software that form part of the general commercial releases of the Software that AlertDriving makes available from time to time.

ARTICLE 4 – FEES AND TAXES

4.01 Fees

Customer shall pay to AlertDriving all applicable Fees, as and when due, as set out in the Order. All Fees and other sums due to AlertDriving under this Agreement shall be paid by Customer within sixty (60) days following the date of AlertDriving's Invoice in respect thereof. Customer agrees that it shall pay all Fees to AlertDriving without abatement, set-off or deduction. Any terms and conditions on any purchase order or other contrary terms and conditions submitted by Customer to AlertDriving shall be of no force or effect.

4.02 Taxes and Other Charges

In addition to all Fees payable under this Agreement, Customer shall pay all sales, use, value added, personal property, withholding and other taxes resulting from this Agreement or any activities under this Agreement, excluding taxes based on AlertDriving's net income, unless Customer furnishes proof of exemption from payment of such taxes that is in a form reasonably acceptable to AlertDriving. Any taxes payable by Customer shall be billed as separate items on AlertDriving's Invoices in addition to the Fees. In the event that applicable law requires that any taxes be deducted from the Fees, the Fees shall be grossed up by the amount of such deduction such that AlertDriving will receive the amount of Fees that would have been owing had the deduction for taxes not been made.

4.03 Interest

Interest shall accrue on all amounts not paid when due at the lesser of 1.5% per month or the highest rate permitted under applicable law.

ARTICLE 5 – INTELLECTUAL PROPERTY OWNERSHIP

5.01 AlertDriving's Intellectual Property

Customer acknowledges and agrees that all right, title and interest, (including all Intellectual Property Rights), in and to AlertDriving's Intellectual Property including, without limitation, all Intellectual Property Rights in any ideas, concepts, designs, inventions, and expressions embodied in such materials, will be at all times be vested in and remain the property of AlertDriving. No title or ownership rights whatsoever are transferred to Customer in respect of AlertDriving's Intellectual Property. AlertDriving hereby reserves all rights not expressly granted herein.

5.02 Customer's Intellectual Property

AlertDriving acknowledges and agrees that all right, title and interest, (including all Intellectual Property Rights), in and to the Customer Materials and Customer's trade-marks, including, without limitation, all Intellectual Property Rights therein, will be at all times vested in and remain the property of Customer. No title or ownership rights whatsoever are transferred to AlertDriving in respect of the Customer Materials or Customer's trade-marks. Customer hereby reserves all rights not expressly granted in this Agreement.

ARTICLE 6 – LICENSES TO ALERTDRIVING

6.01 Trade-marks

Subject to the provisions of this Agreement, if Customer has requested that AlertDriving display Customer's brand indicia on the Website, Customer hereby grants to AlertDriving a royalty-free, non-exclusive license for the Term to copy, use and display Customer's trade-marks on the Website in connection with the Software and the performance of its obligations under this Agreement. To the extent that Customer requires that AlertDriving cease using any Customer's trade-marks that are essential to the performance of AlertDriving's obligations under this Agreement, AlertDriving shall be relieved of such obligations.

6.02 Use of Trade-Marks

- (a) AlertDriving shall use only the licensed trade-marks of Customer in accordance with the style guidelines provided by Customer and with Customer's prior written consent. Use of any licensed trade-marks of Customer by AlertDriving shall at all times conform with applicable law, regulation and good trade-mark and branding practice. AlertDriving shall not, directly or indirectly, advertise, exploit, promote or otherwise deal with any of the licensed trade-marks of Customer in any manner that might adversely affect the goodwill attaching to and symbolized by such trade-marks or otherwise than in accordance with guidelines established by the other party from time to time. All use of Customer's trade-marks by AlertDriving shall enure to the benefit of Customer.
- (b) Except for AlertDriving's possible registration of the Domain Name for the Website where applicable, (which registration shall be cancelled by AlertDriving upon expiration or earlier termination of this Agreement) neither party shall be entitled to register an Internet domain name, or use an Internet URL, containing any trade-mark or business name of the other.
- (c) Neither party shall use any mark, word, design, logo, trade-mark or trade name that is confusing with any of the licensed trade-marks of the other party.

6.03 Customer Materials

- (a) Customer hereby grants to AlertDriving a fully paid-up, royalty-free, non-exclusive license for the Term, to copy, use, modify, translate and display Customer Materials in connection with the operation of the Software for Customer and the performance of its obligations under this Agreement. To the extent that Customer requires the return of any Customer Materials that are essential to the performance of AlertDriving's obligations under this Agreement, AlertDriving shall be relieved of such obligations.
- (b) To the extent that the Software incorporates algorithms for machine learning, robotic process automation or other artificial intelligence-related purposes, Customer grants to AlertDriving a fully paid-up, royalty-free, non-exclusive license for the Term to use Customer Materials for training, improving, and developing such algorithms. Such algorithms will not incorporate Customer Materials or any other Confidential Information of Customer in a form that identifies Customer or any Authorized User. AlertDriving retains all Intellectual Property Rights in and to such algorithms; any work produced and generated by any machine learning, robotic process automation or other artificial intelligence, including configuration and process design, shall be treated as if it were produced by AlertDriving and forms part of AlertDriving's Intellectual Property and AlertDriving's Confidential information.

ARTICLE 7 – CONFIDENTIALITY AND PRIVACY

7.01 Confidentiality

- (a) Throughout the Confidentiality Period, neither party shall disclose the other party's Confidential Information or the terms and conditions of this Agreement to any third parties except to: (i) such party's employees, agents, representatives, accountants, attorneys, and financial advisors with a "need to know" and subject to the reasonable confidentiality restrictions; or (ii) as otherwise required by law. Confidential Information disclosed in tangible or electronic form may be identified as confidential with conspicuous markings, or otherwise identified with a legend as being confidential, but in no event shall the absence of such a mark or legend preclude disclosed information which would be considered proprietary or confidential by a party exercising reasonable business judgment from being treated as Confidential Information.
- (b) Throughout the Confidentiality Period each party shall use the same care to prevent disclosing to third parties the Confidential Information of the other party as it employs to avoid disclosure, publication, or dissemination of its own Confidential Information, but in no event less than a reasonable standard of care. Except as contemplated by this Agreement, throughout the Confidentiality Period neither party shall make any use of the other party's Confidential Information (except as required to perform its obligations under this Agreement) or refuse to promptly return, provide a copy of, or destroy the other party's Confidential Information upon request of the other party. To the extent that Customer requires the return of any Confidential Information of Customer that is essential to the performance of AlertDriving's obligations under this Agreement, AlertDriving shall be relieved of such obligations. The Recipient shall immediately notify the Discloser upon gaining knowledge of any disclosure, loss, or use of the Discloser's Confidential Information in violation of this Agreement.
- (c) Each party acknowledges that its disclosure of the Discloser's Confidential Information may cause irreparable harm to the Discloser which cannot be sufficiently compensated by monetary damages and that the Discloser shall be entitled, without waiving any other rights or remedies, to seek such injunctive or equitable relief as is deemed just by a court of competent jurisdiction.
- (d) Neither party may use the other party's name in advertisements or press releases, nor otherwise disclose the content of this Agreement without the other's prior written consent. The obligations stated in this section shall survive the expiration or termination of this Agreement.

7.02 Privacy

- (a) AlertDriving shall maintain all Customer Data in compliance with the Data Protection Legislation and the Privacy Policy, provided, however, that AlertDriving shall have the right to terminate this Agreement upon ninety (90) days written notice if AlertDriving, in its sole and unfettered discretion, determines that compliance with the Data Protection Legislation, as amended from time to time, is financially or operationally onerous. In the event of early termination of this Agreement under the above condition, AlertDriving agrees to provide Customer with a full refund for any pre-paid and unused Licenses that the Customer purchased from AlertDriving, within thirty (30) days of the above referenced written notice.
- (b) AlertDriving acknowledges and agrees that Customer Data is the Confidential Information of Customer. Customer has the right to use the Customer Data. AlertDriving does not acquire any right, title or interest in or to Customer Data by virtue of this Agreement, or otherwise.
- (c) AlertDriving shall Process Customer Data only for the purposes of performing its obligations under this Agreement and shall not access, Process, use, amend, copy or transfer Customer Data for any other purposes. Customer shall obtain consents from all Data Subjects to ensure that each Data Subject agrees to the disclosure of his or her Customer Data to AlertDriving for purposes of registration and the use and disclosure by AlertDriving of such information as

necessary to fulfil its obligations under this Agreement. AlertDriving shall not disclose, distribute, sell or transfer Customer Data to any third party except as permitted by the Data Protection Legislation.

- (d) AlertDriving shall take commercially reasonable technical and organizational security measures against unauthorized or unlawful processing of Customer Data and against accidental loss or destruction of, or damage to, or disclosure of Customer Data. Customer shall have the right to request changes in such security measures, or additional security measures, in accordance with the provisions of the Agreement. AlertDriving shall take precautions, as provided below, to ensure that Customer Data are not accessed, Processed, used, amended, copied or transferred in a manner incompatible with that purpose.
- (e) AlertDriving shall ensure that Customer Data is accessible only by employees of AlertDriving and its subcontractors who require access to Customer Data in order for AlertDriving to fulfil its obligations under this Agreement.
- (f) Upon request, AlertDriving shall assist the Customer, in responding to inquiries from Data Subjects and in giving effect to the rights of Data Subjects under the Data Protection Legislation (including any rights to obtain information about their Customer Data being processed by AlertDriving under the Agreement as well as any rights of access to, or correction, blocking, suppression or deletion of such Customer Data) and shall comply with any reasonable instructions issued by Customer in connection therewith, provided that, should any such instructions result in a material increase in costs to AlertDriving of providing the access and use of the Software and Website to Customer, AlertDriving may increase the Fees under this Agreement to offset such increase in costs.
- (g) AlertDriving shall provide Customer with such co-operation, assistance and information as it may reasonably request, and carry out such acts as any such Customer may reasonably request, to enable it to comply with its obligations under the Data Protection Legislation and to respond to inquiries from, and co-operate as necessary with, any relevant regulator in relation to Customer Data.
- (h) Upon request, AlertDriving shall promptly return all Customer Data to Customer in a commercially standard format reasonably acceptable to Customer and AlertDriving or, at Customer's request, destroy such Customer Data. If Customer is in default of its obligations under this Agreement at the time of Customer's request for return or destruction of Customer Data, AlertDriving's then-standard fees for the destruction or migration of such data will apply. To the extent that Customer requires the return of any Customer Data that is essential to the performance of AlertDriving's obligations under this Agreement, AlertDriving shall be relieved of such obligations.

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

8.01 General

Each party represents and warrants to the other party that: (a) such party has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (b) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate any agreement to which such party is a party or by which it is otherwise bound; (c) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (d) such party acknowledges that the other party makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement.

8.02 By AlertDriving

AlertDriving represents, warrants and covenants to Customer that: (a) the Software and the Website shall function in accordance with the Documentation; (b) all Services shall be performed in a timely, professional and workmanlike manner by well-qualified personnel; and (c) all Customer Confidential Information and Customer Data will be stored in Canada.

8.03 By Customer

Customer represents, warrants and covenants to AlertDriving that: (a) Customer has obtained all required consents in respect of Customer Data that are necessary to transfer the Customer Data to AlertDriving and for AlertDriving to access, Process and modify the Customer Data as necessary to perform its obligations under this Agreement; (b) Customer has all rights to grant the licenses to AlertDriving in Section 6.01 and Section 6.03; (c) the Customer Data do not violate any national or international law or any regulations having the force of law, including any law or regulation regarding privacy rights, or any law or regulation regarding harassment or defamation or other tort, and the Customer Data otherwise are not objectionable; (d) the Customer Data do not infringe the Intellectual Property Rights or privacy rights of any Person; (e) Customer will not access any information or data provided or controlled by any other customer or end user of AlertDriving and will abide by and will not circumvent or otherwise disable any security or data protection measures implemented by AlertDriving; (f) use of the Software by Customer will not interfere with or disrupt the Website or the servers or networks connected to the Website, or violate any requirements, procedures, policies or regulations of AlertDriving; and (g) Customer will not, and will not permit any Person to, upload, post, email, transmit or otherwise make available using or in connection with the Website any material that contains Viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.

8.04 Disclaimers

- (a) EXCEPT AS OTHERWISE EXPRESSLY WARRANTED IN THIS AGREEMENT:
- (i) ALERTDRIVING DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE WEBSITE, THE SOFTWARE, THE LICENSES AND ANY SERVICES;
 - (ii) ALERTDRIVING DOES NOT WARRANT THAT THE FUNCTIONALITY OF THE WEBSITE, THE SOFTWARE, THE LICENSES OR THE PERFORMANCE OF ANY SERVICES IS FIT FOR ANY PARTICULAR PURPOSE OR THAT THE OPERATION OF THE WEBSITE, THE SOFTWARE, THE LICENSES OR ANY SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR ACCURATE, THAT DEFECTS ARE CAPABLE OF CORRECTION, OR THAT THE WEBSITE, THE SOFTWARE, THE LICENSES OR THE SERVER THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES, WORMS OR OTHER HARMFUL COMPONENTS;
 - (iii) ALERTDRIVING DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE WEBSITE, THE SOFTWARE, THE LICENSES OR THE SERVICES IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, SECURITY, TIMELINESS, SEQUENCE, AUTHENTICITY OR COMPLETENESS OR OTHERWISE AND DISCLAIMS ANY RESPONSIBILITY THEREFOR; AND
 - (iv) ALERTDRIVING DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS

REGARDING THE EFFECTIVENESS OF THE CONTENT PRESENTED THROUGH THE WEBSITE OR THE SOFTWARE OR THE LICENSES OR THAT THE USE OF THE WEBSITE OR THE SOFTWARE OR THE LICENSES WILL RESULT IN AUTHORIZED USERS' SAFE OPERATION OF THEIR VEHICLES.

ARTICLE 9 - LIMITATION OF LIABILITY

- 9.01 SAVE AND EXCEPT FOR CLAIMS ARISING OUT OF WILLFUL MISCONDUCT OR FRAUD, THE AGGREGATE LIABILITY OF ALERTDRIVING, ITS AFFILIATES AND LICENSORS UNDER THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE AMOUNT OF FEES PAID TO ALERTDRIVING HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM.
- 9.02 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, FAILURE TO RECOGNIZE EXPECTED SAVINGS OR OTHER ECONOMIC LOSS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.03 The warranty disclaimers in Section 8.04 and limitations of liability set forth in Article 9 are fundamental elements of the basis of the agreement between AlertDriving and Customer. The limitations of liability in Article 9 apply notwithstanding the failure of any essential remedy. AlertDriving would not be able to provide the Software, the Licenses, the Website or the Services on an economic basis without such limitations. The warranty disclaimers and limitations of liability enure to the benefit of AlertDriving's representatives, successors and assigns.

ARTICLE 10 - INDEMNITIES

10.01 AlertDriving Indemnity

Subject to Section **10.02** below, AlertDriving shall defend and indemnify Customer and its Affiliates and each of their employees, officers, directors, shareholders, contractors and agents from any and all claims, liabilities, losses, damages, expenses, or causes of action, including reasonable legal fees and expenses, arising out of or related to any action brought by a third Person against any of them to the extent that the action is based on a claim that the Website, the Software or any of AlertDriving's Services infringes the Intellectual Property Rights of such third Person enforceable in the Territory.

10.02 Qualifications

Notwithstanding Section **10.01**, AlertDriving shall not have any liability for any third Person claim in respect of the infringement of such third Person's Intellectual Property Rights if:

- (a) such infringement would have been avoided by the use of a functionally equivalent new version or workaround of the allegedly infringing intellectual property and such new version was made available to Customer by AlertDriving at no charge prior to the commencement of the claim;
- (b) the infringement claim is based on designs, requirements or specifications supplied by Customer;
- (c) the infringement claim is based on any unauthorized use or disposition of AlertDriving's intellectual property by Customer;

- (d) the Customer continued use of the allegedly infringing intellectual property after written notice from AlertDriving to Customer to cease use on account of such alleged infringement claim;
- (e) Customer acquired a trade secret that is the subject of such infringement claim:
 - (i) through improper means; or
 - (ii) from a Person (other than AlertDriving or its Affiliates) who owed to the third Person asserting the claim a duty to maintain the secrecy or limit the use of the trade secret;
- (f) the combination, operation or use of the allegedly infringing intellectual property with programs or data not furnished, recommended or required by AlertDriving if such infringement would have been avoided without such programs or data; or
- (g) any modifications or changes to the allegedly infringing intellectual property based on requests made by Customer.

10.03 Customer Indemnity

Customer shall defend and indemnify AlertDriving and its Affiliates and each of their employees, officers, directors, shareholders, contractors and agents from any and all claims, liabilities, losses, damages, expenses, or causes of action, including reasonable legal fees and expenses, arising out of or related to: (a) the use (whether lawful or unlawful) or misuse of the Licenses, the Software and/or the Website by any or all of its Authorized Users; (b) any breach of this Agreement or violation of applicable law by Customer or any or all of its Authorized Users; or (c) Customer Materials or Customer's trade-marks or the combination of Customer Materials or Customer trade-marks with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Customer Materials or Customer trade-marks or by the use, development, design, production, advertising or marketing of Customer Materials and/or Customer trade-marks as permitted under this Agreement.

10.04 Injunctions

In the event an injunction is obtained against Customer's use of the Software or the Website as a result of any infringement claim, AlertDriving may, at its sole option and expense, promptly: procure for Customer the right to continue using the Website or affected Software; replace or modify the Website or affected Software so that it does not infringe while providing functionally equivalent performance; or terminate this Agreement and all licenses granted herein and release Customer from any further liability hereunder.

10.05 Indemnification Procedure

- (a) If any claim is commenced against an indemnified party, notice thereof will be given to the indemnifying party as promptly as practicable.
- (b) Upon receipt of such notice the indemnifying party shall immediately take control of the defence and investigation of such claim and to employ and engage legal counsel to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnified party will cooperate, at the cost of the indemnifying party, in all reasonable respects with the indemnifying party and its counsel in the investigation, trial and defence of such claim and any appeal arising there from; provided, however, that the indemnified party may, at its own cost and expense, participate, through its counsel or otherwise, in such investigation, trial and defence of such claim and any appeal arising there from.
- (c) No settlement of a claim will be entered into without the approval of the indemnified party. After the indemnifying party assumes control of the defence of any such claim, the indemnifying party

will not be liable to the indemnified party for any further legal expenses or other costs incurred thereafter by such indemnified party in connection with the defence of that claim.

- (d) If for any reason the indemnifying party does not assume full control over the defence of a claim subject to such defence as provided herein, the indemnified party will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the indemnifying party.

ARTICLE 11 - TERM AND TERMINATION

- 11.01 Unless terminated sooner in accordance with the provisions of this Agreement, this Agreement commences on the Effective Date and continues until all Licenses have expired or have been terminated (the "**Term**").
- 11.02 The term of each License will commence on the date that AlertDriving receives payment for the License and continue for one (1) year thereafter ("**License Term**").
- 11.03 AlertDriving may terminate this Agreement on thirty (30) days' prior written notice if Customer fails to pay any Fees or taxes when due unless Customer pays all amounts outstanding to AlertDriving, if any during such notice period.
- 11.04 This Agreement may be terminated by either party on thirty (30) days' prior written notice if the other party is in default of any of its material obligations under this Agreement and such default is not remedied to the satisfaction of the other party within such thirty (30) day period.
- 11.05 This Agreement may be terminated by either party immediately upon written notice to the other if the other party: becomes or is declared bankrupt; becomes the subject of any proceeding related to its liquidation or insolvency which is not dismissed within ninety (90) days; makes an assignment for the benefit of creditors; suffers or permits the appointment of a receiver for its business and assets; ceases to do business; or voluntarily or involuntarily dissolves or liquidates its business; and as a result is unable to perform its obligations hereunder.

ARTICLE 12 - TRANSITION PROVISIONS

- 12.01 Upon expiry or other termination of this Agreement:
 - (a) all Licenses are automatically revoked, and AlertDriving shall terminate access to the Website and Software and otherwise cease providing all Services to Customer. Customer shall notify its Authorized Users to cease all use of the Software;
 - (b) Customer will pay all Fees then outstanding to the date of expiry or termination, as the case may be, plus accrued interest, if any, and no obligation of either party accrued prior to the expiry of the Term or the date of termination, as the case may be, shall be affected or discharged;
 - (c) Customer will deliver to AlertDriving or, at AlertDriving's request, destroy, all copies of the Documentation provided by AlertDriving then being used by Customer in connection with this Agreement;
 - (d) except with respect to Customer Data, which shall be treated in accordance with Section 12.01(e) below, each party shall return or destroy all copies, in whatever media, of the other party's Confidential Information in its possession or control, and, upon request by a party, a senior officer of the other party shall certify such return or destruction, as the case may be, that no copies of the such party's Confidential Information or related materials or documentation, or

any part thereof, in any form, shall remain in the possession or control of the other party. Customer acknowledges that all Billing Information will be retained by AlertDriving;

- (e) AlertDriving shall promptly return all Customer Data to Customer or, at Customer's request, destroy such Customer Data in each case in a commercially standard format reasonably acceptable to Customer and AlertDriving. If Customer is in default of its obligations under this Agreement at the termination or expiry of this Agreement, AlertDriving's then-standard fees for the destruction or migration of such data will apply. No portion of Customer Data shall be sold, assigned, leased, commercially exploited, or otherwise disposed of by or on behalf of AlertDriving, its Affiliates, subcontractors, employees or agents;
- (f) AlertDriving shall immediately cease to use any and all trade-marks of Customer and all Customer Materials and shall not perform any Services or dispose of any materials bearing Customer's trade-marks; and
- (g) the parties shall not undertake any action that infers any commercial or other relationship between them.

ARTICLE 13 - GENERAL PROVISIONS

- 13.01 **Entire Agreement.** This Agreement and any other attachments or addenda hereto executed by the parties, constitute the entire agreement between AlertDriving and Customer with respect to the subject matter of this Agreement, and any and all written or oral agreements previously existing between AlertDriving and Customer pertaining to such subject matter are expressly cancelled. This Agreement may only be modified by the prior written approval of a duly authorized representative of each party. In the event of a conflict between Article 1 to 13 inclusive of this Agreement, the SLA, the Privacy Policy, the Documentation and any other document incorporated by reference, the following is the governing order, with preceding items on the list governing over subsequently listed items:
- (a) Articles 1 to 13, inclusive, of this Agreement;
 - (b) the SLA;
 - (c) the Privacy Policy;
 - (d) the Documentation; and
 - (e) other AlertDriving policies incorporated by reference.
- 13.02 **Amendments.** Customer agrees that AlertDriving may amend the SLA, the Privacy Policy or any other AlertDriving policy that may be incorporated by reference to this Agreement by posting a revised version on the Website. The amended terms of the SLA, Privacy Policy or other policy, as applicable, will be effective upon, and deemed to be incorporated into this Agreement as of, the earlier to occur of: (a) thirty (30) days after posting; or (b) if AlertDriving provides a mechanism for Customer's immediate acceptance of the revised terms, such as a click-through confirmation or acceptance button, Customer's acceptance. By continuing to use or receive the Software, the Website, any Licenses or any Services after the effective date of such amendments, Customer agrees to be bound by the amended SLA, Privacy Policy or other policy, as applicable. Any other amendment of this Agreement must be in writing and executed by both parties.
- 13.03 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same agreement. A signature on a copy of this Agreement received by either party by facsimile is binding upon the other party as an original. The parties shall treat a photocopy of such facsimile as a duplicate original.

- 13.04 **Currency.** All dollar amounts referred to herein are expressed in United States funds unless otherwise specified.
- 13.05 **Force Majeure.** Neither party shall be held responsible for any delay or failure in performance under this Agreement (except for the payment of any Fees by Customer) to the extent such delay or failure is caused by fire, flood, strike, civil, governmental or military authority, act of God, inability to obtain delivery of parts, supplies, labour conditions, pandemic, earthquakes or any other cause beyond its control and without the fault or negligence of the delayed or nonperforming party ("**Force Majeure Events**"). The time for performance of any act delayed by such causes shall be postponed for a period equal to the delay; provided, however, that the party so affected shall give prompt notice to the other party of such delay. The party so affected, however, shall use its best efforts to avoid or remove such causes of non-performance and to complete performance of the act delayed, whenever such causes are removed.
- 13.06 **Governing Law.** Disputes arising out of or relating to this Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario. Any and all litigation arising out of this Agreement shall be commenced in the Province of Ontario, and the parties hereby consent to such jurisdiction and venue. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 13.07 **Legal Fees.** In the event of any dispute arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable legal fees and costs.
- 13.08 **Notices.** All notices, consents, approvals, statements, authorizations, documents or other communications ("notices") required or permitted to be given hereunder shall be in writing, and shall be delivered by fax, personally or mailed by registered mail, postage pre-paid, to the said parties at the respective addresses set forth hereunder, namely:

To AlertDriving at: 12 Concorde Place, Suite 800
Toronto, Ontario M3C 3R8
Attention: Gerry Martin
Fax: (416) 750-7862
Email: legal@alertdriving.com

to Customer at the address indicated on the Order, or at any such other address or addresses as may be given by any of them to the other in writing from time to time. Such notices, if mailed, shall be deemed to have been given on the second (2nd) Business Day following such mailing, or, if delivered by fax or personally, shall be deemed to have been given on the day of delivery, if a Business Day, or if not a Business Day, on the Business Day next following the day of delivery; provided that if such notice shall have been mailed and if regular mail service shall be interrupted by strike or other irregularity before the deemed receipt of such notice as aforesaid, then such notice shall not be effective unless delivered.

- 13.09 **Export Control.** Customer shall comply with applicable export laws and regulations in the performance of its obligations under this Agreement and obtain any permits, licenses and authorizations required for such compliance.
- 13.10 **No Waiver.** The failure of either party to enforce at any time or for any period of time, the provisions of this Agreement shall not be interpreted to be a waiver of such provisions or of the right of such party to enforce each and every such provision.
- 13.11 **Partial Invalidation.** In the event that any provision of this Agreement shall be held by law, or found by a court or other tribunal of competent jurisdiction to be unenforceable as stated herein, such provision shall remain enforceable to the extent permitted by applicable law or the findings of the court or other tribunal of competent jurisdiction, and the remaining portions hereof shall remain in full force and effect. In such event, AlertDriving and Customer agree to negotiate in good faith a substitute enforceable

provision that most nearly effects AlertDriving's and Customer's intent in entering into this Agreement.

- 13.12 **Relationship of parties.** The parties hereto are independent contractors. Nothing contained herein or done in pursuance of this Agreement shall constitute either party the agent, partner, or co-venturor of the other party for any purpose or in any sense whatsoever, or create any form of joint enterprise whatsoever between the parties.
- 13.13 **No Third Party Rights.** This Agreement does not provide any Person not a party to the Agreement with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference to this Agreement.
- 13.14 **Survival of Certain Provisions.** The parties' rights and obligations contained in **Article 1, Article 5, Article 7, Article 9, Article 10, Article 12, Article 13** and Sections 2.02(a), **2.03** and **8.04**, as well as any obligations to make payments of Fees accrued or due hereunder prior to termination, shall survive any termination of this Agreement.
- 13.15 **Assignment.** Neither party may assign, transfer, sub-contract or in any other manner assign to any third party the rights and/or duties of this Agreement (whether by assignment, change of control, operation of law or otherwise) without the other party's prior written consent, which shall not be unreasonably withheld, and any such assignment, transfer or sub-contract shall be void and of no force or effect. Notwithstanding the foregoing, AlertDriving may assign this Agreement and its rights as obligations hereunder as part of the sale of all or substantially all of its assets, a merger or as part of any corporate reorganization. This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.