

Alden One® Online Subscription Agreement

Alden One® is the proprietary web-based software solution offered by Alden Systems, Inc. (“Alden”) to manage joint use and infrastructure assets.

Alden One® is offered through this online subscription agreement in either a Free version or an Advanced version. In addition, a Premium version is available by quote only. Please refer to Alden’s website at <https://www.aldensys.com/pricing> for a description of the features of each version.

This online registration and subscription can only be used for the Free and Advanced versions of Alden One®. If you are interested in the Premium version, please contact us at <https://offers.aldensys.com/sales> and a representative will speak to you. Any subscription for the Premium version of Alden One® will be governed by a separate written agreement.

Alden One® is designed for and may only be used by owners of infrastructure assets (e.g., utility poles, conduit, cellular towers, and other utility assets), owners of equipment or facilities to be attached to those infrastructure assets, and services firms (e.g., engineering and construction companies) working on behalf of an asset owner or an attaching entity. All other users are prohibited unless specifically consented to by Alden in writing.

Direct competitors of Alden may not subscribe to Alden One® without Alden’s prior written consent. No Subscriber or User may use Alden One® for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

No Subscriber or User of Alden One® is permitted to use Alden One® to solicit business for itself or any other person. Any person violating this provision will be prohibited from future use of Alden One® and be subject to any and all other applicable legal remedies.

This Agreement has been updated on October 28, 2019. This Agreement is effective between new subscribers to Alden One® as of its date of acceptance by the new subscriber. Existing free subscribers to Alden One® as of the date of this agreement will be governed by this revised agreement and may choose to upgrade to the Advanced version of Alden One® by registering and subscribing for the Advanced version at <https://www.aldensys.com/pricing>

Your subscription to either the Free or Advanced version of Alden One® is subject to the following terms and conditions. **BY REGISTERING AND CLICKING THE BOX INDICATING YOUR ACCEPTANCE, YOU (AS THE “SUBSCRIBER”) AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THOSE ABOVE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A CORPORATION OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE SUBSCRIBER SHALL BE SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE ALDEN ONE®.**

1. DEFINITIONS. For purposes of this Agreement, the following terms have the meanings given below:

“Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with the Subscriber. Control for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Alden One®” means the services associated with the online, Web-based version of Alden One® provided by Alden for use solely as described in this Agreement and the User Guide that you can access from Alden One®.

“Data” means all electronic data or information submitted by a Subscriber into Alden One® or loaded into Alden One® by Alden on the Subscriber’s behalf.

“Subscriber” means any person or entity subscribing to use Alden One® under this Agreement.

“Users” mean individuals who are authorized by you to use Alden One®. Users are limited to your employees, consultants, contractors and agents solely for use in accordance with the purposes of this Agreement.

2. PROVISION AND USE OF ALDEN ONE®

2.1 Provision of Alden One®. We will make the services associated with Alden One® available to you as a Subscriber pursuant to this Agreement.

2.2 Passwords. We shall provide you the opportunity to create passwords and user identifications to access Alden One®. You shall maintain the confidentiality of all passwords assigned to you. You may not share passwords with third parties or attempt to access Alden One® without providing a password assigned to you. If you are a business entity, your employees or agents may register individually, and you must appoint a primary contact with whom Alden can communicate any information or notices relating to this Agreement.

2.3 Your Responsibilities. You are (i) responsible for your compliance with this Agreement, (ii) responsible for the accuracy, quality, integrity and legality of your Data, and for the means by which you acquired your Data, (iii) required to use commercially reasonable efforts to prevent unauthorized access to or use of Alden One®, and notify Alden promptly of any such unauthorized access or use and (iv) required to use Alden One® in accordance with the User Guide and applicable laws and government regulations. You may not (a) make Alden One® available to anyone other than Users, (b) sell, resell, rent or lease Alden One®, (c) use Alden One® to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use Alden One® to store or transmit malicious code or malware, or to engage in spamming, phishing or other fraudulent activity, (e) interfere with or disrupt the integrity or performance of Alden One® or third-party data contained therein, or (f) attempt to gain unauthorized access to Alden One® or our systems or networks.

2.4 Customer Data. You are responsible for collecting, inputting and updating all your Data. You represent and warrant that your Data does not and will not (a) include anything that infringes the copyright, patent, trade secret, trademark or any other intellectual property right of any third party; (b) contain anything that is obscene, defamatory, harassing, offensive or malicious; or (c) otherwise violate any other right of any third party.

3. AUTHORIZED USE ONLY. Subscribers to the Free version of Alden One® are authorized only to view the assets of or communicate with others regarding the assets of a paid subscriber. ANY USE OR ATTEMPTED USE OF ALDEN ONE BY A FREE SUBSCRIBER FOR ANY OTHER PURPOSE IS STRICTLY PROHIBITED. Alden may terminate the free access to and use of Alden One® at any time after giving 30 days' notice in accordance with Section 10 (Notices).

4. SERVICES PROVIDED AND LICENSES.

4.1 License to Use Services. We grant you a personal, non-transferable, non-exclusive, limited scope license during the term of this Agreement to access via the internet in the ordinary course of your business the services associated with Alden One® to communicate and share information with persons or entities regarding infrastructure assets, including but not limited to: poles, conduit vaults and ducts, and towers.

You agree not to (i) create derivative works based on Alden One®, (ii) copy, frame or mirror any part or content of Alden One®, other than copying or framing on your own intranets or otherwise for your own internal business purposes, (iii) reverse engineer Alden One®, or (iv) access Alden One® in order to build a competitive product or service or to copy any features, functions or graphics of Alden One®.

4.2 Your License to Alden. (a) You grant us a royalty-free, worldwide, transferrable, sublicensable, irrevocable, perpetual license to use, reproduce, transmit, display and adapt any and all information uploaded or posted by you or persons communicating with you through Alden One® including, without limitation, the location, ownership, and current joint users of infrastructure assets in your areas of operations, provided that this license may be used solely for communicating such data to users of Alden's Alden One® products and services. In addition, other than as necessary or appropriate in the course of a conversation between you and a person you are communicating with through Alden One®, you do not grant any license for Alden to use, and Alden may not disclose to any person or use for any purpose, (i) any financial or pricing information; or (ii) any information relating to actual, possible or alleged violations of any applicable laws, regulations or rules with respect to ownership, use, attachments or other matters relating to infrastructure asset use.

(b) Except as otherwise provided in this Section 4.2(b), you grant Alden a royalty-free, worldwide, transferrable, sublicensable, irrevocable, perpetual license to use or incorporate into our services any suggestions, enhancement requests, recommendations or other feedback provided by you relating to the operation of our services and to use your name, logos and trademarks solely to publicize the business relationship created by this Agreement either on our website or in promotional materials Alden may develop.

(c) You grant Alden the right to send you email correspondence concerning Alden and its products and services, provided that you will be given the opportunity to opt out of receiving any such correspondence. Alden agrees not to sell or otherwise transfer your email contact information to any third parties for any purpose unless required under provisions of applicable law.

5. PROPRIETARY RIGHTS. Subject to the limited rights expressly granted hereunder, Alden reserves all rights, title and interest in and to Alden One®, including all related intellectual property rights subsisting therein. You have been granted only a license to use the services provided by Alden One® in accordance with this Agreement. Alden grants no rights to you hereunder other than as expressly set forth herein.

6. EXCLUSION OF WARRANTIES.

WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS WITH RESPECT TO ALDEN ONE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DO NOT WARRANT THAT ALDEN ONE IS FREE OF ALL DEFECTS AND WE DO NOT REPRESENT OR WARRANT THAT YOUR USE OF ALDEN ONE WILL MEET YOUR BUSINESS REQUIREMENTS OR THAT YOUR USE OF ALDEN ONE WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR.

7. LIMITATION OF LIABILITY. IN NO EVENT SHALL WE HAVE ANY LIABILITY TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WITHOUT LIMITING THE FOREGOING, WE SHALL HAVE NO LIABILITY FOR LOSS OF BUSINESS OPPORTUNITY, PROFITS, REVENUE OR DATA OR FOR INTERRUPTIONS IN SERVICE. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8. INDEMNITY.

You will indemnify, defend, and hold Alden harmless from and against any and all costs, liabilities, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees) resulting from any claim, suit, action or proceeding brought by any third party against Alden that arises out of or relates to (a) your breach of any representations, warranties or agreements made by you under this Agreement or (b) your use of Alden One®.

9. TERM AND TERMINATION.

9.1 Term. This Agreement commences on the date you accept it and continues until terminated in accordance with Section 9.2 (Termination).

9.2 Termination. You may terminate your Alden One® service without cause at any time upon written notice to Alden addressed to the attention of Alden One® Agreement

Administration, AccountsReceivable@Aldensys.com. Subscribers to the Advanced version of Alden One® must notify Alden at least five business days prior to your next monthly term in order to prevent a charge to their credit card for such month. Alden may terminate your Alden One® service (a) at any time without cause upon 30 days' written notice to you, or (b) immediately on the event of your material breach of this Agreement. Upon any termination of your Alden One® service, this Agreement shall also terminate, subject to Section 9.3 (Surviving Provisions).

9.3 Surviving Provisions. Sections 4.2(a) (Your License to Us), 5 (Proprietary Rights), 6 (Exclusion of Warranties), 10 (Notices, Governing Law and Jurisdiction) and 12 (General Provisions) shall survive any termination or expiration of this Agreement.

10. NOTICES, GOVERNING LAW, VENUE, AND WAIVER OF JURY TRIAL.

10.1 Notices. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon; (a) personal delivery, (b) the second business day after mailing, (c) the second business day after sending by confirmed facsimile, or (d) the first business day after sending by email. Notices to Alden shall be addressed to the attention of Alden One® Agreement Administration, generalcounsel@aldensys.com. Notices to you shall be addressed to the primary contact designated by you in your registration for Alden One®.

10.2 Governing Law. This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of Alabama and controlling United States federal law, without regard to their conflicts of laws.

10.3 Venue; Waiver of Jury Trial. The state and federal courts located in Birmingham, Alabama shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

11. CHANGE TO TERMS

Alden may make changes to this Agreement from time to time. When these changes are made, Alden will make a new copy of the Agreement available on this web page and notify you of the availability of the new agreement for your review. You understand and agree that if you use Alden One® after the date on which you are notified that this Agreement has changed, your continued use of Alden One® will be an acceptance of the updated Agreement.

12. GENERAL PROVISIONS

12.1 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

12.2 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

12.3 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

12.4 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as to best accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

12.5 Assignment. You may not assign any rights or obligations hereunder, whether by operation of law or otherwise, without our prior written consent. Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted.