

NY-ALERT USE AGREEMENT

Between

And

THE NEW YORK STATE OFFICE OF INFORMATION TECHNOLOGY SERVICES

THIS AGREEMENT is entered into between the State of New York (hereinafter “the State” or “NYS”), acting by and through the New York State Office of Information Technologies Services (“ITS”), having its principal place of business at: Empire State Plaza, Swan Street Building, Core 4, 1st Floor, Albany, NY 12223 and _____ (“Entity” or “Authorized Entity”) located at: _____, collectively referred to as the “Parties.”

I. Purpose

The purpose of this Agreement is to set forth the conditions, terms and respective responsibilities of the Parties with respect to the utilization of the New York State Mass Alert Notification System (“NY-Alert”). NY-Alert provides an Authorized Entity the ability to send emergency and safety related messaging to targeted recipients.

Entities that partner with ITS for use of NY-Alert may develop specific policies and procedures that meet the identified needs of their Entity, so long as the procedures do not deviate from, dilute or contradict the terms and conditions contained within this Agreement.

II. Procedures for Obtaining Authorization to Access NY-Alert

Attachment 1, PROCESS FOR NY-ALERT INTEGRATION and APPROVAL, outlines the procedures that an Entity must follow in order to get authorization to access NY-Alert.

III. Definitions:

- a. Authorized Entity: An entity that has been granted approval to access and use NY-Alert by ITS.
- b. Notifier: A person who has been designated by an Authorized Entity to create Notifications within NY-Alert on behalf of that Authorized Entity.
- c. Notification: A message, press release or alert.
- d. Notification Group: A collection of Subscribers or enrollees to NY-Alert designated to receive Notifications disseminated by an Authorized Entity (*e.g.*, parents of a student enrolled in a school district).
- e. Private Notification: A Notification provided by an Authorized Entity to a targeted audience within their organization (*e.g.*, a Notification by a school or college campus alerting their students of a closing due to inclement weather).
- f. Private Organization: An Authorized Entity who has not been approved to provide Public Safety Alerting.
- g. Public Safety Alert: An alert issued by a Public Safety Organization before, during and after an emergency, critical incident or event (whether natural or technological) (*e.g.*, Notifications for evacuations, sheltering in place, Haz-Mat release, etc.).
- h. Public Safety Organization: A State and/or local government organization responsible for public safety (*e.g.*, Emergency Management Offices, Police Departments, Fire

Departments) and approved by the New York State Division of Homeland Security to send Public Safety Alerts.

- i. Subscriber: An individual who or entity that registers through the NY-Alert public portal to receive Notifications.

IV. Obligations and Responsibilities:

- NY-Alert shall not be used in any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the United States or other countries).
- Use of NY-Alert shall comply with all applicable security policies and procedures of ITS, including the ITS Policy on Acceptable Use of Information Technology (IT) Resources. ITS security policies and procedures can be found at:
<https://www.its.ny.gov/eiso/policies/security>.
- NY-Alert shall only be used in the performance of Entity's official duties and for the purposes indicated in this Agreement.
- NY-Alert shall not be used for any political purpose or for financial or personal gain.
- NY-Alert shall not be used to transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain letter," "spam" or any other similar solicitation.
- NY-Alert shall not be used to impersonate or attempt to impersonate another person or entity, including by utilizing another person's identification, password, account name or persona without authorization from that person.
- NY-Alert shall not be used in any manner that could disrupt, disable, overburden, damage, or impair the service, including the ability to send timely Notifications through the service, using various means including overloading, "flooding," or denial of service attacks.
- NY-Alert shall not be used for any unauthorized activities. Such use could result in a verbal or written warning, loss of access rights, and/or criminal or civil prosecution. This list of possible penalties is not exhaustive.

The Authorized Entity shall be responsible for:

- Designating a Point-of-Contact ("POC"): The Authorized Entity shall designate a lead POC and secondary alternate POC who will be approved to provide all authorizing signatures and permissions for the internal structuring and use of NY-Alert by that Authorized Entity (*see* Attachment 2);
- Establishing policies that provide a person with Notifier status while restricting his or her ability to independently determine the need for and/or the ability to create and transmit an Alert or Notification absent Notifier supervisory direction (*e.g.*, dispatcher, office support personnel);
- Being responsible for insuring that those individuals identified as having Notifier status understand and agree to the terms of this Agreement; and
- Being responsible for the use of NY-Alert by their designated Notifiers and hold the State harmless for any misuse of NY-Alert by those designees.

The Authorized Entity POC shall be responsible for:

- Identifying the persons who should be granted Notifier status, including their names, email addresses and telephone numbers, and submitting that list of requested designees to NY-Alert for credentials and password issuance;
- Approving the establishment of all Notification Groups within their organization;

- Maintaining accurate Notification Groups including, but not limited to, adding personnel and relevant contact information, deleting personnel, creating additional Notification Groups, assigning personnel to newly created Notification Groups, and importing/updating this information into the NY-Alert database; and
- Reapplying for authorization when a Notifier is replaced. Authorization is not provided *Ex Officio*.

The Notifier shall be responsible for:

- Receiving training in connection with his or her use of NY-Alert by the Authorized Entity's POC and/or ITS NY-Alert personnel (NY-Alert credentials and passwords will be issued after successful completion of the training);
- Applying remote access security as it relates to his or her use of NY-Alert;
- Not transferring or sharing his or her account or password information;
- The use of NY-Alert by anyone accessing NY-Alert through his or her credentials;
- The proper use of NY-Alert and the accuracy of the content of all Notifications transmitted; and
- Notifying ITS NY-Alert personnel immediately, if they become aware of any unauthorized use of his or her account or password.

V. Operations

1. Authorized Entities are encouraged to test their Notification Groups on a monthly basis. Testing should be limited to email and/or SMS text messaging Notification Channels (see Attachment 3). While there is no prohibition on using the Voice Notification channels (Mass Dialers and Reverse 911), use of these channels should be reserved for actual life/safety purposes.
2. Limited to County Authorized Entities - Reverse 911 Notification Channels are only available to Public Safety Organizations which are granted Public Safety Alerting permission by the New York State Division of Homeland Security and Emergency Services ("DHSES"). This is NOT an "opt-in" service. County Emergency Management Offices may receive periodic directory updates from the Local Exchange Companies (*i.e.*, telephone companies) for emergency contacting purposes. Counties participating in NY-Alert are encouraged to import this data into NY-Alert on an annual basis (minimally) to maintain an accurate profile of their resident's telephone numbers. NY-Alert will accept up to a maximum of four imports per calendar year from participating counties. Residents may "opt-out" by contacting NY-Alerts and requesting their telephone number be removed.
3. Organizations requiring Public Safety Alerting capability must submit Attachment 3, Request for NY-Alert Public Safety Alerting Authority, to DHSES for approval and authorization. Upon approval, DHSES will notify ITS NY-Alert to grant Public Safety Alerting permissions.
4. ITS personnel will NOT disseminate any Public Safety Alerts or Notifications.
5. Municipal Governance: NYS recognizes the County as the lead agency for public safety within its jurisdiction. As such, ITS will defer to the County POC for municipalities requesting NY-Alert capability. Counties may elect to create the municipality as an Authorized Entity within their structure or direct ITS to set-up the municipality as an independent Authorized Entity. In situations where the County does not participate in NY-

Alert, ITS will create the municipality as an independent Authorized Entity¹.

VI. Consideration:

This is not a funds obligating Agreement. Neither Party is bound to take any action or fund any initiative. This Agreement does not authorize financial expenditures by ITS.

There is no charge to the Entity for the use of NY-Alert. The Entity is responsible for all costs related to providing their users with access to NY-Alert via the public Internet. These costs may include hardware, software, monthly Internet charges, completion of security awareness training and other related costs.

VII. New York State Appendix A - Standard Terms for State Contracts:

New York State Appendix A-Standard Clauses for All New York State Contracts ("Appendix A") is incorporated by reference (<http://ogs.ny.gov/About/appendixa.asp>) hereto and made part hereof. Notwithstanding the foregoing, the Parties expressly acknowledge that due to the legal nature of the Entity not all Appendix A terms may be applicable.

VIII. Term:

This Agreement shall commence on the date executed by the Entity and shall remain in effect until such time as this Agreement is terminated in accordance with the following provisions:

- a. Voluntary termination shall take effect upon ninety (90) days prior written notice to the other party.
- b. Termination for cause shall take effect immediately, at the discretion of ITS, if it is determined that the Entity has failed to abide by the terms of this Agreement.

Upon termination, all system access privileges will be immediately revoked.

IX. Records Retention

The Entity shall continue to own all of its information, data, and records. NY-Alert is not to be used as an archival service. ITS is not responsible for meeting the Entity's records retention responsibilities under the New York State Arts and Cultural Affairs Law or any other applicable statute. ITS will ensure all generated Notifications will be available online for a minimum of thirty (30) days. It is the responsibility of the Entity to determine whether a generated Notification is an agency record for purposes of compliance with the law and make the appropriate arrangements to preserve such record off of the NY-Alert system.

X. Public Information

Disclosure of items related to this Agreement shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law ("FOIL") which is contained in Section 87 of the Public Officers Law. The State shall take reasonable steps to protect from public disclosure any of the records relating to this Agreement that are otherwise exempt from disclosure under that statute.

¹ The Sewage Pollution Right to Know (SPRTK) Law of 2013 requires operators of Municipal Waste Water Treatment Facilities (i.e. Publicly-Owned Treatment Works [POTWs] and Publicly-Owned Sewer Systems [POSSs]) to report certain instances of untreated or partially-treated sewage discharges to NYS DEC and health authorities. Public notifications are disseminated via NY-Alert. This process is governed by NYS Department of Environmental Conservation.

XI. Intellectual Property Rights

All text, software (including source and object codes), visual, oral or other digital material, photographs, information, data, graphics and all other content of any description included in the services, including any communications, (collectively, the “Content”), and all copyrights, trademarks, service marks, patents, patent registration rights, trade secrets, know-how, database rights, and all other rights in or relating to the services and the Content (collectively, the “Intellectual Property”) are owned by NYS or by our licensors, and are protected by copyrights, trademarks, service marks, international treaties or other proprietary rights and laws of the United States of America (“U.S.”). The services and the Content are also protected as a collective work or compilation under U.S. copyright and other laws and treaties. No Content or Intellectual Property may be copied, modified, published, broadcast, or otherwise distributed without ITS’s prior written consent. ITS may withhold consent for any reason it deems appropriate.

The Entity may only use NY-Alert, the Content, and the Intellectual Property as expressly permitted by this Agreement and for no other purposes.

The Entity may not use any of ITS trademarks, trade names or service marks in any manner that creates the impression that such names and marks belong to, or are associated with, the Entity or are used with ITS consent, and the Entity acknowledges that it has no ownership rights in and to any of these names and marks. All present and future rights in, and title to, NY-Alert (including database rights and the right to exploit the services and any portions of the services over any present or future technology) are reserved to ITS for our exclusive use.

XII. Authorized Third Parties

Some of the websites used by NYS are hosted externally, on behalf of NYS, by contractors using webpages that are designed to look and feel like they are part of the NY.GOV domain. NYS utilizes a third party’s capabilities to provide the NY-Alert service. ITS reserves the right to allow third parties to provide any necessary services to us and/or to the Entity to enable ITS to provide the services.

XIII. Release

The Entity hereby irrevocably and unconditionally releases NYS (and its officers, employees, agents, successors and assigns) from any and all claims for damages (actual or consequential), costs or expenses of any kind or nature whatsoever that Entity may have against NYS (and its officers, employees, agents, successors and assigns) arising out of or in any way related to or in connection with the use of NY-Alert.

XIV. Disclaimers

ITS is providing NY-Alert “as is” ITS does not provide any warranty whatsoever, whether express, implied, or statutory, including, but not limited to, any warranty of merchantability or fitness for a particular purpose or any warranty that NY-Alert will be error-free. In no respect shall ITS incur any liability for any damages, including direct, indirect, special, or consequential damages arising out of, resulting from, or any way connected to Entity’s use of NY-Alert.

XV. Indemnity

The Entity agrees to indemnify, defend and hold NYS harmless from any and all claims or suits

(including, without limitation, reasonable legal fees and expenses) that arise out of Entity's breach of this Agreement, use of NY-Alert, or violation of any law or the rights of a third party.

XVI. Nonperformance

If for any reason, ITS or any contractors and/or subcontractors engaged in the provision of services to this Agreement fail to perform in their agreements with ITS which results in ITS' inability and/or degraded ability to deliver the NY-Alert, then ITS' liability to the Entity shall be limited solely to the return of any consideration paid.

XVII. Cancellation of Previous Agreement

This Agreement cancels and supersedes any previously signed agreement between the Entity and NYS regarding the use of NY-Alert.

XVIII. Modification of Agreement

This Agreement may only be modified by the written agreement of the Parties, duly signed by their authorized representatives.

XIX. Transferability and Assignment

This Agreement cannot be transferred or assigned by the Entity except with the written consent of the ITS.

XX. Entire Agreement

It is expressly understood and agreed that this Agreement embodies the entire agreement between the Parties regarding the Agreement's subject matter.

XXI. Acknowledgement and Agreement

The Entity understands that the terms of this Agreement are a condition of the initial and continued access and use of the NY-Alert service and agrees to all the terms and conditions in this Agreement.

ENTITY NAME: _____

AUTHORIZED SIGNATORY: _____

NAME (print): _____

TITLE: _____

DATE: _____

ATTACHMENT 1

PROCESS FOR NY-ALERT INTEGRATION and APPROVAL

- Parties will discuss the NY-Alert functionality and potential use.
- ITS NY-Alert will provide to the Entity the Agreement for Use of NY-Alert.
- Entity's authorized signatory executes the Agreement, before a notary public, and returns the executed Agreement to ITS NY-Alerts Unit at nyalertsupport@its.ny.gov . In the email subject line please include the name of your entity (e.g., NY-Alert Agreement – NYS DOT, NY-Alert Agreement – Niagara County, etc.).
- Entity completes the POC Assignment form (Attachment 2), executed by the Entity's authorized signatory, and returns the completed form to ITS NY-Alert at nyalertsupport@its.ny.gov.
- If applicable, Entity Executive completes the Request for Public Safety Alerting Authority (Attachment 3) and submits the completed form to DHSES Office of Emergency Management ("OEM") for approval.
- POC provides ITS NY-Alert with a list of requested Notifiers which includes his or her:
 - Name
 - Position/Rank/Title
 - Office Address
 - Mobile #
 - Email Address
- ITS NY-Alert provides Alert/Notification Training to the initial designated Notifiers.
- An Authorized Entity's POC develops Notification Group(s) (utilizing .csv format) and provides the recipient list(s) to ITS NY-Alert (including the name of the group(s) and all needed data) or ITS NY-Alert will provide the Authorized Entity with the ability to import their Notification Group directly into NY-Alert.
- ITS NY-Alert generates an initial Notification Group(s) and notifies POC when completed.
- ITS NY-Alert provides access credentials to Notifiers.

ATTACHMENT 2

NY-ALERT ENTITY POINT-OF-CONTACT ASSIGNMENT

Please complete the following form and return it to ITS NY-Alert at nyalertsupport@its.ny.gov.
Upon receipt, ITS NY-Alert will contact the identified POC to complete the process of granting access to NY-Alert to your Entity.

ENTITY: _____

1) PRIMARY POINT OF CONTACT: _____

POSITION/RANK/TITLE: _____

TELEPHONE: _____

MOBILE #: _____

OFFICE ADDRESS: _____

EMAIL ADDRESS: _____

2) ALTERNATE POINT OF CONTACT: _____

POSITION/RANK/TITLE: _____

TELEPHONE: _____

MOBILE #: _____

OFFICE ADDRESS: _____

EMAIL ADDRESS: _____

ENTITY'S AUTHORIZED SIGNATORY

SIGNATURE: _____

NAME (print): _____

TITLE: _____

DATE: _____

ATTACHMENT 3

REQUEST FOR NY-ALERT **PUBLIC SAFETY ALERTING AUTHORITY**

NOTE: ONLY FOR ENTITIES REQUIRING PUBLIC SAFETY ALERTING **AUTHORITY**

Please complete the following form and return the form to NYS DHSES OEM at dh ses.sm.nys.watchcenter@dh ses.ny.gov. Upon approval, DHSES will forward a copy of the approved form to ITS NY-Alert at nyalerts support@its.ny.gov.

REQUESTING ENTITY: _____

JURISDICTION REQUESTED: _____

NOTIFICATION CHANNELS REQUESTED:

- EMAIL _____
- SMS TEXT _____
- VOICE: MASS DIALERS _____ REVERSE 911 _____
- FACSIMILE _____
- TWITTER _____
- FACEBOOK _____
- RSS FEEDS* ☐ X ☐
- WEBSITE POSTING* ☐ X ☐
- SMARTPHONE APP (iOS and ANDROID) * ☐ X ☐

(* These channels are automatically enabled)

Note: IPAWS/CMAS/WEA channel is available but requires FEMA pre-approval, credentials and specific training before activation.

ENTITY EXECUTIVE

NAME: _____
POSITION/RANK/TITLE: _____
TELEPHONE: _____
MOBILE #: _____
OFFICE ADDRESS: _____

EMAIL ADDRESS: _____
SIGNATURE: _____
DATE: _____

APPROVED BY NYS DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES, OFFICE OF EMERGENCY MANAGEMENT:

NAME: _____
POSITION/RANK TITLE: _____
DATE: _____
SIGNATURE: _____