

Services Agreement

NOTE: THIS SERVICES AGREEMENT WILL ONLY APPLY TO THE EXTENT THAT NO BINDING AGREEMENT, WRITTEN OR ELECTRONIC, (THE "OTHER AGREEMENT") IS ALREADY IN PLACE BETWEEN CUSTOMER (DEFINED BELOW) AND URBAN AIRSHIP, INC. PERTAINING TO THE PRODUCTS AND/OR SERVICES TO WHICH THIS AGREEMENT APPLIES. TO THE EXTENT THAT ANY OTHER AGREEMENT IS IN EFFECT, THEN SUCH OTHER AGREEMENT WILL GOVERN CUSTOMER'S USE OF THE HOSTED SERVICE (AS DEFINED BELOW) AND THIS AGREEMENT WILL NOT APPLY EVEN IF YOU ARE REQUIRED TO CLICK THE BOX AFFIRMING YOUR CONSENT TO THE TERMS OF THIS AGREEMENT.

BY COMPLETING THE ONLINE REGISTRATION FORM AND CLICKING THE "I AGREE" BUTTON, YOU SUBMIT TO URBAN AIRSHIP, INC. ("URBAN AIRSHIP"), AN OFFER TO OBTAIN THE RIGHT TO USE THE HOSTED SERVICE UNDER THE PROVISIONS OF THIS MASTER SERVICES AGREEMENT (THE "AGREEMENT").

BY CLICKING THE "I AGREE" BUTTON, YOU HEREBY AGREE THAT YOU HAVE THE REQUISITE AUTHORITY, POWER AND RIGHT TO FULLY BIND THE PERSON AND/OR ENTITIE(S) (COLLECTIVELY, THE "CUSTOMER") WISHING TO USE THE HOSTED SERVICE LISTED ON THE ORDER CONFIRMATION PAGE, ORDER FORM, QUOTE AND/OR INVOICE (EACH AN "ORDER FORM") WHICH WE PROVIDE TO CUSTOMER IN CONNECTION WITH THE PURCHASE OF LICENSES TO ACCESS AND USE THE HOSTED SERVICE OR RELATED PROFESSIONAL SERVICES. THE TERMS OF EACH ORDERING DOCUMENT WILL SET FORTH THE SPECIFIC TERMS OF THE ORDER BUT ALL APPLICABLE TERMS AND CONDITIONS BELOW SHALL APPLY.

IF YOU DO NOT HAVE THE AUTHORITY TO BIND THE CUSTOMER OR YOU OR THE CUSTOMER DO NOT AGREE TO ANY OF THE TERMS BELOW, URBAN AIRSHIP IS UNWILLING TO PROVIDE THE HOSTED SERVICE TO CUSTOMER, AND YOU SHOULD NOT CLICK TO ACCEPT THE TERMS OF THIS AGREEMENT AND YOU SHOULD DISCONTINUE THE ORDER, AND/OR REGISTRATION PROCESS.

1. Ordering

Pursuant to this Agreement, Customer may order from Urban Airship (a) licenses to access and use one or more of Urban Airship's hosted online services and related APIs (each, a "Service") and/or (b) related configuration, customization or other professional services ("Professional Services"). The specifics of each Customer order will be set forth on one or more order forms or other ordering documents (each of which may be electronic in nature, an "Order Form"). Services may be ordered as part of an aggregated platform offering or as individual service offerings (all as further described on the relevant Order Form).

2. Access to Services

- 1. Grant of Access** Subject to the terms and conditions of this Agreement, Urban Airship grants Customer a non-exclusive, non-transferable, non-sublicenseable license to access the Service(s) listed on an Order Form for the applicable Subscription Term (as defined in Section 11.1) through an Urban Airship-designated website (currently located at go.urbanairship.com) (the "Site") to gain access to, upload, and manipulate and manage data owned, provided or aggregated by Customer as uploaded to the Service solely for Customer's own business purposes. Customer: (a) is solely responsible for all Customer Data (defined below) regardless of whether such data is uploaded directly by Customer or by Urban Airship at the direction of Customer; (b) acknowledges that Urban Airship has no control over and will not monitor the content of the Customer Data; and (c) agrees that Customer will be responsible for (i) establishing all terms and conditions applicable to its users (ensuring that such terms and conditions comply with this Agreement) and (ii) obtaining all necessary consents of third parties to the collection, processing, and use of Customer Data, including any processing by Urban Airship in connection with Urban Airship's provision of the Service. Customer may access the Service

only as permitted by this Agreement. Customer will be solely responsible for designating the scope of access for each of its users within the Service; provided that in no event will any user have any rights in or have access to the Service that are greater than the rights granted to or the access permitted by Customer hereunder. As used herein, "Customer Data" means all data that Customer uploads to the Service or otherwise makes available via the Service, which may include, without limitation, and dependant upon the Services acquired the following: device token information used for authentication (for all Services), email message content (for AirMail Inbox Service), and/or lists of Customer products (for Subscription Service).

2. **Use of the Service** Customer will be assigned a unique user identification name and password for access to and use of the Service by Customer (the "Customer ID"). Customer will be responsible for assigning a unique user identification name and password (the "User ID") for access to and use of the Service by its authorized employee users. Customer acknowledges that it will be fully responsible for all liabilities incurred through use of any Customer ID or User ID (whether lawful or unlawful) and that any transactions completed under a Customer ID or User ID will be deemed to have been completed by Customer. Customer agrees to maintain a current list of all users authorized to access the Service on behalf of Customer. Customer will not permit more than one individual to log-in and use the Services unless additional fees are paid by Customer. If Customer fails to comply with the requirement in the foregoing sentence Urban Airship may disable or suspend access to the Services and/or terminate the applicable Order Form.
3. **Certain Rights** Urban Airship reserves the right to upgrade and update the Site and/or Service at its discretion, including without limitation the software upon which the Service is based, and the features and functionalities available through the Service.
4. **Third Parties** Urban Airship uses third parties to perform certain services including the hosting of the Service ("Hosting Services") and may change its provider from time to time. All access to the Service through Hosting Services will be subject to this Agreement and Urban Airship's acceptable use policy located at www.urbanairship.com/legal.
5. **Software** Urban Airship may provide or make available to you certain libraries or software code that are not required to use of the Services but which may be used in connection with the Services (collectively, "UA Code"). Urban Airship hereby grants to you a royalty-free, non-exclusive, non-transferable (except pursuant to Section 15), worldwide right and license to use such UA Code solely in connection with Services. Customer assumes all risk and liability in connection with its use of the UA Code.
6. **Support** Urban Airship will provide support for the Services pursuant to the terms set forth at www.urbanairship.com/legal.

3. Availability

Subject to the terms and conditions of this Agreement, Urban Airship will use commercially reasonable efforts to make the Site and the Service available. Urban Airship does not warrant that Customer's use of the Service will be error-free or uninterrupted.

4. Data

1. **Control of Data** Other than to the limited extent provided in Section 4.2 below, Customer will have sole control over any and all Customer Data which Customer uploads through the Service. Customer hereby grants to Urban Airship a non-exclusive, royalty-free, worldwide license during the Term of this Agreement to reproduce, distribute, publicly perform, publicly display and digitally perform the Customer Data solely on or in conjunction with the Service. Additionally, Customer understands that the technical processing and transmission of the Service, including any Customer Data provided by Customer, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices, and Customer consents to such transmission and changes.
2. **Right of Removal** Urban Airship and its designees shall have the right (but not the obligation) in their sole discretion to refuse or remove any data that is available via the Service that violates any of the

terms of this Agreement or any applicable law.

3. **Usage Data** Urban Airship shall have the right to use, create derivative works of, distribute and otherwise exploit anonymous, aggregate usage data derived from Customer Data ("Usage Data") such as the aggregate number of transactions that occur within a particular Service provided that in no event will Urban Airship disclose or make available any Usage Data in a manner that does or reasonably could permit the recipient of such information to determine that such Usage Data pertained to Customer in particular.

5. Professional Services

Any customization, implementation, configuration or other professional services ("Professional Services") will be set forth in a separate statement of work (each an "SOW") which will include the relevant details of such services, including any specifications, schedules, fees and payment terms. Unless otherwise expressly agreed to in the particular SOW, Urban Airship and Customer agree that any and all deliverables, work product or other results ("Work Product") of the Professional Services provided to Customer shall be owned exclusively by Urban Airship, including all intellectual property and proprietary rights therein.

6. Restrictions on Use

Customer agrees not to: (a) sublicense, transfer, or otherwise provide access to the Site, the Service, any UA Code or Work Product to any third party; (b) interfere in any manner with the Site, the Service, any UA Code or any services associated therewith; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for any UA Code provided in binary format only or for any other software used or accessed by Customer that is part of the Site, the Service or any Work Product; (d) access or attempt to access any data that is controlled or provided by any other Urban Airship customer except as expressly permitted in writing in advance by Urban Airship and such other customer; (e) remove, modify or obscure any copyright, trademark, service mark, tagline or other notices that appear during use of the Service or any UA Code; or (f) in any way access, use, or copy any portion of the Site, the Service, the UA Code or Work Product (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Site or the Services.

7. Fees and Payment

Customer will pay to Urban Airship the Service fee set forth on the applicable Order Form (the "Services Fee") pursuant to the payment terms set forth on such Order Form. After the Initial Subscription Term (defined below), Urban Airship reserves the right to modify the fees and other charges for the subsequent Renewal Subscription Term (defined below) upon notice to Customer no less than sixty (60) days prior to the beginning of such Renewal Subscription Term. In addition, in the event of any change in Client's licensors and suppliers' charges that materially increase the cost of delivery of the Service, Client reserves the right to modify fees and other charges for the Service to reflect such increase in cost upon no less than thirty (30) days prior written notice. The fees payable to Urban Airship exclude all applicable sales, use and other taxes, and Customer will be responsible for payment of all such taxes (other than taxes based on Urban Airship's net income), fees, duties and charges, and any related penalties and interest, arising from the payment of such fees or the delivery or use of the Site, the Service, and/or any Work Product.

8. Warranties and Disclaimer of Warranties

1. **Representations and Warranties of Urban Airship** Urban Airship represents and warrants that: (a) Urban Airship has all rights necessary to offer the Services; (b) the Services (as provided and independent of Customer's specific usage thereof) do not violate any applicable law; and (c) the Service as provided by Urban Airship (and exclusive of any Customer Data) will not contain any material that contains software 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 ("Malicious Code").
2. **Representations and Warranties of Customer** Customer represents and warrants that: (a) Customer has all rights necessary to provide, access, and modify the Customer Data, including all rights to grant

the license to Urban Airship in Section 4.1; (b) Customer has all rights necessary to permit its users to access and use the Customer Data; (c) the Customer Data do not violate any applicable law, including any law or regulation regarding the transmission of technical data exported from the United States or any other applicable country, any law or regulation regarding privacy rights, or any law or regulation regarding harassment or defamation or other tort; (d) Customer will not access any information or data provided or controlled by any other customer or end user of Urban Airship and will abide by and will not circumvent or otherwise disable any security or data protection measures implemented by Urban Airship; and (e) Customer will not, and will not permit any third party to, upload, post, email, transmit or otherwise make available using or in connection with the Service any Malicious Code.

3. **Disclaimers** Subject to section 8.1, The site and the service, and all professional services, are provided "as is" without any warranty of any kind. Company expressly disclaims all warranties, express, implied, or statutory, including any implied warranties of merchantability, fitness for a particular purpose, title, data accuracy, system integration, quiet enjoyment., And non-infringement of third party rights relating to any services provided by company under this agreement. Each party acknowledges that it has relied on no representations or warranties other than any express representations and warranties set forth in this agreement. Other than using then-current industry-standard technology, Urban Airship does not guarantee the privacy, security, authenticity and non-corruption of any information transmitted through, or stored in any system connected to, the internet.

9. Indemnity

1. **By Urban Airship** Urban Airship will defend, indemnify and hold harmless Customer from and against any claims, suits, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) brought by third parties resulting from or relating to any claim that the Service, as provided by Urban Airship, infringes or misappropriates the intellectual property rights of any third party. If any Service (or any component thereof) becomes, or in Urban Airship's opinion is likely to become, the subject of an infringement claim or any claim that it violates applicable law, then notwithstanding any other provision of this Agreement, Urban Airship may, at its option and expense, either (y) procure for Customer the right to continue exercising the rights licensed to Customer in this Agreement, or (z) replace or modify the Service so that it becomes non-infringing and/or does not violate applicable law. If neither of the foregoing options are, in Urban Airship's reasonable opinion, commercially reasonable, Urban Airship may terminate this Agreement and will refund to Customer a pro-rata portion of any applicable prepaid Fees for the then-current Subscription Term.
2. **By Customer** Customer will defend, indemnify and hold harmless Urban Airship from and against any claims, suits, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) brought by third parties resulting from or relating to: (a) a breach by Customer of any representation or warranty set forth in Section 8.2, (b) any claim that the Customer Data, as provided by Customer, infringes or misappropriates the intellectual property rights of any third party; or (c) use of any User ID under this Agreement.
3. **Process** The indemnification obligations of each party ("Indemnifying Party") are conditioned on the party seeking indemnification ("Indemnified Party") (a) notifying the Indemnifying Party promptly in writing of such action, (b) giving the Indemnifying Party sole control of the defense thereof and any related settlement negotiations, and (c) cooperating and, at Indemnifying Party's reasonable request and expense, assisting in such defense.

10. Limitation of Liability

Except as it relates to either party's indemnity obligations described in section 9 above in no event will either party be liable to the other for any lost profits, lost data, or equipment downtime nor for any indirect, incidental, special, or consequential damages of any kind even if it has been advised of the possibility of such damages. In no event will either party's total cumulative liability under this agreement, from all causes of action of any kind, including tort, contract, negligence and strict liability, exceed the amounts paid to Urban Airship by customer for the particular services that are the subject of such claim. Each party acknowledges and agrees that the foregoing limitations of liability are essential elements of the bargain and that in the absence of such limitations, the financial and other terms of this Agreement would be

substantially different.

11. Term, Termination and Effects

- 1. Term and Termination** This Agreement shall continue in effect until terminated as set forth herein. The initial subscription term ("Initial Subscription Term") for each Service license purchased will be as set forth in the applicable Order Form. The Order Form will also specify the duration of each automatic renewal term that commences after the expiration of the Initial Subscription Term (the "Renewal Subscription Term" and, together with the Initial Subscription Term, the "Subscription Term"). Each Initial Subscription Term will commence on the date that both parties have executed the Order Form under which Customer acquires such license, unless a later commencement date is expressly set forth on such Order Form. During each Renewal Subscription Term, the terms and conditions (including Fees) that were in effect during the preceding Initial Subscription Term or Renewal Subscription Term (as applicable) will apply unless either party notifies the other at least thirty (30) days prior to the commencement of the renewal term that it does not intend to renew the Subscription Term upon the same terms. In addition, this Agreement and/or any Order Form, if applicable, may be terminated (a) by either party if the other party materially breaches this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party (except that such cure period shall be five (5) days for breaches of Sections 2 or 13), or (b) as set forth in Section 9.1.
- 2. Effects of Termination** Upon termination or expiration of this Agreement or Order Form (as applicable) for any reason: (a) any amounts owed to Urban Airship under this Agreement or Order Form (as applicable) before such termination or expiration will be immediately due and payable; (b) all licensed rights, including rights of access to the Service, granted in this Agreement or Order Form (as applicable) will immediately cease to exist, and Urban Airship will cease making the Service available, and if applicable, cease performing all Professional Services; (c) Customer must promptly discontinue all use of the Service and User IDs for the terminated licenses; and (d) upon Urban Airship's receipt of all payments from Customer, Urban Airship will return all data uploaded by or for the Customer under this Agreement or Order Form (as applicable) within a reasonable period of time using an appropriate electronic medium. Sections 2.6, 4.3, 6 through 13, and 15 will survive termination of this Agreement for any reason. Any termination of a particular Order Form will not, by itself, terminate this Agreement; rather all other Order Forms then outstanding will remain in effect.

12. Proprietary Rights

The structure, sequence, organization, and the look and feel of the Service, the Site, the Work Product, Urban Airship's Confidential Information, and any of Urban Airship's trademarks and all worldwide intellectual property rights therein, are the exclusive property of Urban Airship and its suppliers. All rights in and to the Service not expressly granted to Customer in this Agreement are reserved by Urban Airship and its suppliers and licensors. As between the parties, Customer retains all ownership in and to the Customer Data subject to the licenses granted in Section 4. Urban Airship (and our providers, suppliers and licensors) may perpetually use, share, commercialize and exploit any and all feedback related to the Service or this Agreement that is provided by Customer (excluding any Customer Data or Customer Confidential Information included therein).

13. Confidentiality

Each party (the "Receiving Party") will maintain in confidence all Confidential Information (as defined below) disclosed to it by the other party (the "Disclosing Party"). The Receiving Party will not use or disclose Confidential Information of the Disclosing Party except as expressly authorized by this Agreement. The Receiving Party will protect the Disclosing Party's Confidential Information with the same standard of care that the Receiving Party uses to protect its own confidential information, but in no event less than a reasonable degree of care. "Confidential Information" means any confidential or proprietary information of either party (whether in graphic, written, oral, or electronic form), including without limitation any source code, software tools, designs, or any other information relating to any research project, work in process, future development, scientific, marketing or business plan or financial or personnel matter relating to the

Disclosing Party, its present or future products, sales, suppliers, customers, employees, investors or business. The obligations of confidentiality contained in this Section 11 will not apply to any information to the extent that it can be established by the Receiving Party by competent proof: (a) was available to the public prior to the Disclosing Party's first disclosure to Receiving Party; (b) is lawfully received by the Receiving Party from a third party having no obligation of confidentiality with respect to such information; or (c) is independently developed by Receiving Party without access to or use of the Confidential Information of the Disclosing Party. Nothing in this Agreement will prohibit the Receiving Party from disclosing Confidential Information of the Disclosing Party if legally required to do so by judicial or governmental order, provided that the Receiving Party will give the Disclosing Party prompt notice of such requirement at least ten (10) days prior to disclosure and cooperate with the Disclosing Party in the event that the Disclosing Party elects to contest such disclosure or seek a protective order with respect to such disclosure. Neither party may disclose the terms and conditions of this Agreement to any third party (other than its attorneys, accountants, and other professional advisors under a duty of confidentiality) without the prior consent of the other party except: (i) as may be required by law, a court order, or a governmental agency with jurisdiction, provided that before making such a disclosure the party making the disclosure first notifies the other party as provided above, and (ii) to potential investors, lenders, purchasers of the party's business, merger parties, and underwriters in connection with their due diligence in future financings, acquisitions, mergers, or public offerings.

14. Publicity

Urban Airship shall have the right to use in marketing, advertising, and promotional materials the corporate name and logo of the entity for whom the Service is being used (whether Customer or a third party).

15. Miscellaneous

The parties are independent contractors with respect to each other, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, agency relationship or a joint venture between the parties. Each party will be excused from any delay or failure in performance hereunder, other than the payment of money, caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to acts of God, earthquake, labor disputes and strikes, riots, war and governmental requirements. The obligations and rights of the party so excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay. The terms of this Agreement shall be binding on the parties, and all successors to the foregoing. Neither party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other party's prior written consent except pursuant to a transfer of all or substantially all of such party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void. All modifications to or waivers of any terms of this Agreement must be in a writing that is signed by the parties hereto and expressly references this Agreement. This Agreement shall be governed by the laws of the State of Oregon, without regard to Oregon conflict of laws rules. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to this Agreement shall be the state or federal courts located in Multnomah County, Oregon. Each party waives any objection (on the grounds of lack of jurisdiction, forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or enforcement of this Agreement. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (a) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. This Agreement includes any Order Forms agreed to by the parties in writing and all expressly referenced documents. Collectively the foregoing constitutes the entire agreement between the parties with respect to the subject matter

hereof and supersedes all prior and contemporaneous agreements or communications, including, without limitation, any quotations or proposals submitted by Urban Airship. The terms on any purchase order or similar document submitted by Customer to Urban Airship will have no effect and are hereby rejected. All notices, consents and approvals under this Agreement must be delivered in writing by courier, by facsimile, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at its corporate headquarters and are deemed delivered when received. This Agreement may be executed in counterparts.

About Us

Urban Airship powers the world's most successful mobile apps. The engine behind thousands of apps, Urban Airship's breakthrough technology makes mobile apps far more engaging, effective, and efficient. Top brands depend on Urban Airship to ensure their mobile app initiatives are scalable and profitable.

Urban Airship provides push notifications rich mobile messaging and in-app purchase services, as well as analytics and campaign management tools. [Contact us if you have questions.](#)