

ALERT COURSE END-USER LICENSE AGREEMENT, ALERT PROVIDER CENTRES

Published: 19 March 2007

This End User License Agreement (EULA) is for informational purposes only. There is no ALERT Media accompanying the EULA.

IMPORTANT-READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and Portsmouth Hospitals NHS Trust for the Portsmouth Hospitals NHS Trust ALERT course that accompanies this EULA, which includes associated media, printed materials, "online" or electronic documentation, and Internet-based services ("ALERT Media"). **YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY INSTALLING, COPYING, OR OTHERWISE USING THE ALERT MEDIA. IF YOU DO NOT AGREE, DO NOT INSTALL, COPY, OR USE THE ALERT MEDIA; YOU MAY RETURN IT FOR A FULL REFUND.**

In this Agreement the following capitalized definitions are being used, singular as well as plural.

Agreement: this End User License Agreement, as may be renewed, modified and/or amended from time to time.

Documentation: any online or otherwise enclosed documentation provided by Portsmouth Hospitals NHS Trust.

Effective Date: the date on which this Agreement is entered into by the end user.

IP Rights: any and all intellectual property rights, including but not limited to copyright, trademarks and patents, as well as know how contained in or relating to the ALERT Media, the Documentation, the Website or Promotional Materials.

Password: refers to a code You select, which, in combination with the User ID, gives You access to Your User Account;

PHT refers to Portsmouth Hospitals NHS Trust, ALERT Coordinating Centre, QuAD Building, Queen Alexandra Hospital, Cosham, Portsmouth PO6 3LY. Telephone 023 9228 6000

Online Material: Any downloadable files directly obtainable from the ALERT course web site (www.alert-course.com) including the ALERT[®] banner available for download on the Website, consisting of a logo and a link to the Website.

Promotional Materials: any and all trademarks, names, signs, logos, banners, Online Material and any other materials, in whatever form, owned and/or used by Portsmouth Hospitals NHS Trust for the promotion of ALERT, its products and activities.

ALERT Media: the ALERT Media distributed by Portsmouth Hospitals NHS Trust for internet communication applications, which includes associated media, printed materials, "online" or electronic documentation, and Internet-based services ("ALERT Media") as well as any future fixes, updates and upgrades thereof. ALERT Media does not contain any active or compiled software code. It may contain multi-media components that are generated using third party products.

Staff: the officers, directors, employees and agents of or its registered ALERT centres.

Website: any and all elements, contents and the 'look and feel' of the website available under the URL www.alertcourse.com, – among other URL's –, from which website the ALERT Media can be downloaded.

UI: the user interface of the ALERT Media.

User Account: refers to the account with User ID and Password that You create for Your use of the ALERT Media;

User ID: refers to an identification code which in combination with the Password, gives access to Your User Account;

You: you, the end user of the ALERT Media, also used in the form "Your" where applicable. You also mean the organisation on whose behalf You accept this EULA.

ALERT® "Provider training Centre": centres that are currently running ALERT™ "Provider" Days " and have established an ALERT™ training team by attending a "Train the Trainers" day at Portsmouth or an approved Satellite training centre.

ALERT™ "Satellite Training Centre": centres that are currently running ALERT™ "Provider" Days " and are also providing training for other Trusts to so that they can in addition run ALERT™ "provider" days.

ALERT® "Provider" Days: One day course for trainee doctors ward nurses and Allied Health Professionals (AHPs) in the recognition of impending clinical deterioration, the management of simple disorders of disordered physiology, and other aspects of the delivery of acute care.

ALERT® "Train the Trainers": One day course designed to train other center's personnel in delivering the ALERT™ "Provider" Day.

1. **GRANT OF LICENSE.** Portsmouth Hospitals NHS Trust grants you the following rights provided that you comply with all terms and conditions of this EULA:

1.1 The license rights granted under this EULA permit use of the ALERT Media for training staff of your organisation and personnel that attend your organisation for specific training purposes;

1.1.1 The suggested maximum for an ALERT course is 20 Students. Larger groups may be trained providing there is adequate faculty to facilitate proper training.

1.1.2 Only the authorised ALERT® course teaching materials "ALERT Media" and manuals shall be used for an ALERT® course. These teaching materials will only be obtainable directly from Portsmouth Hospitals NHS Trust or from your local authorized Satellite hub to ALERT provider training centres. (Also see section 2)

1.1.3 Each person attending an ALERT® training course, other than undergraduate students, shall be given an official ALERT® manual to be retained by them for his or her own reference. Undergraduates may use reference materials through their library services or opt to obtain a manual through such services (see Academic ALERT Media below)

1.1.4 The ALERT® manuals shall be available directly from Portsmouth or from your local authorized Satellite hub and may be purchased via an official order against which an invoice shall be raised.

1.1.5 *Certificates of attendance.* You agree to register each person attending an ALERT course to include their name, appropriate professional registration number, date and location of the course. A certificate of attendance at the ALERT® course will be provided to all candidates upon

receipt of the authorised register¹ at Portsmouth, these shall be sent from Portsmouth to course organisers within 30 days.

1.2 Not used

1.3 *Installation and use.* You may install, use, access, display and run one copy of the ALERT Media on a single computer, such as a workstation, terminal or other device ("Workstation Computer"). Up to 20 Faculty members may access or use the ALERT Media for their course preparation purposes however, it is not permitted to distribute ALERT media for general use, access or display on other workstations or PC's without additional licenses.

1.4 *Storage/Network Use.* You may also store or install a copy of the ALERT Media on a storage device, such as a network server, used only to install or run the ALERT Media on your other Workstation Computers over an internal network.

1.5 *ALERT Media Transfer.* Internal. You may move the ALERT Media to a different Workstation Computer. After the transfer, you must completely remove the ALERT Media from the former Workstation Computer. Transfer to Third Party. The initial user of the ALERT Media may make a one-time permanent transfer of this EULA and ALERT Media to another end user, provided the initial user retains no copies of the ALERT Media. This transfer must include all of the ALERT Media (including all component parts, the media and printed materials, any upgrades, this EULA, and, if applicable, the Certificate of Authenticity). The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the ALERT Media must agree to all the EULA terms.

1.6 *ALERT Course Website.* You may download freely any files that are published for use by end users of the ALERT Course. Authorised users may access the course coordinator's tools for the purposes of registering students and ordering ALERT Course materials, and associated ALERT Media. Upon registering as the ALERT course coordinator for your organisation you will be given a User Account and User ID Password and Log-on details. You must protect the Password and Log-on to prevent unauthorised access.

1.7 This EULA is valid for one year from the time of purchase. Licenses will be automatically renewed and invoiced on 1st April each calendar year or the anniversary of purchase unless cancelled by You in writing in advance.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

2.1 Provider centres may use their own material as additions to the course to suit local needs. The ALERT Media contains a standard template that may be used to develop presentation material in the same format and UI as the standard course. You agree to lodge copies of additions with the ALERT coordinating centre at Portsmouth Hospitals NHS Trust.

2.2 If a particular part of the ALERT course is unsuitable for local use then it may be omitted with written agreement from Portsmouth Hospitals NHS Trust.

2.3 From time to time the ALERT coordinating centre will update the website and provide freely downloadable materials for all ALERT users, for example new scenarios and news items. You may contribute to this 'library' of materials and we will acknowledge Your contribution on them.

3. **RESERVATION OF RIGHTS AND OWNERSHIP.** Portsmouth Hospitals NHS Trust reserves all rights not expressly granted to you in this EULA. The ALERT Media is protected by copyright and other intellectual property laws and treaties. Portsmouth Hospitals NHS Trust own the title,

¹ Registration will be available 'on-line' with effect from April 2007

copyright, and other intellectual property rights in the ALERT Media. The ALERT Media is licensed, not sold.

3.1 EXCLUSIVE OWNERSHIP. You acknowledge and agree that any and all IP Rights to or arising from the ALERT Media are and shall remain the exclusive property of Portsmouth Hospitals NHS Trust and/or its licensors. Nothing in this Agreement intends to transfer any such IP Rights to, or to vest any such IP Rights in, You. You are only entitled to the limited use of the IP Rights granted to You in this Agreement. You will not take any action to jeopardize, limit or interfere with the IP Rights. You acknowledge and agree that any unauthorized use of the IP Rights is a violation of this Agreement as well as a violation of intellectual property laws, including without limitation copyright laws and trademark laws. You acknowledge and understand that all title and IP Rights in and to any third party content that is not contained in the ALERT Media, but may be accessed through use of the ALERT Media, is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties.

3.2 NO REMOVAL OF NOTICES. You agree that You will not remove, obscure, make illegible or alter any notices or indications of the IP Rights and/or 's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to any materials.

4. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY. You may not reverse engineer, decompile, or disassemble the ALERT Media, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

5. NO RENTAL/COMMERCIAL HOSTING. You may not rent, lease, lend or provide commercial hosting services with the ALERT Media.

6. CONSENT TO USE OF DATA. You agree that Portsmouth Hospitals NHS Trust and its registered ALERT centres may collect and use technical information gathered as part of the product support services provided to you, if any, related to the ALERT Media. Portsmouth Hospitals NHS Trust may use this information solely to improve our products or to provide customized services or technologies to you and will not disclose this information in a form that personally identifies you.

6.1 You agree that Portsmouth Hospitals NHS Trust and its affiliates may collect and use personal identification details about You and the students that you teach as part of the ALERT registration process. Portsmouth Hospitals NHS Trust may use this information solely to maintain a professional register of ALERT trained persons and will not disclose this information in a form that personally identifies you to any other party other than to confirm, or not, if a person has been ALERT trained, where and when.

7. LINKS TO THIRD PARTY SITES. You may link to third party sites through the use of the ALERT website (www.alert-course.com). The third party sites are not under the control of Portsmouth Hospitals NHS Trust, and Portsmouth Hospitals NHS Trust is not responsible for the contents of any third party sites, any links contained in third party sites, or any changes or updates to third party sites. Portsmouth Hospitals NHS Trust is not responsible for webcasting or any other form of transmission received from any third party sites. Portsmouth Hospitals NHS Trust is providing these links to third party sites to you only as a convenience, and the inclusion of any link does not imply an endorsement by Portsmouth Hospitals NHS Trust of the third party site.

8. **ADDITIONAL ALERT MEDIA/SERVICES.** This EULA applies to updates, supplements, add-on components, or Internet-based service components, of the ALERT Media that Portsmouth Hospitals NHS Trust may provide to you or make available to you after the date you obtain your initial copy of the ALERT Media, unless we provide other terms along with the update, supplement, add-on component, or Internet-based service component. Portsmouth Hospitals NHS Trust reserves the right to discontinue any Internet-based services provided to you or made available to you through the use of the ALERT Media.

9. **UPGRADES.** To use ALERT Media identified as an upgrade, you must first be licensed for the ALERT Media identified by Portsmouth Hospitals NHS Trust as eligible for the upgrade. After upgrading, you may no longer use the ALERT Media that formed the basis for your upgrade eligibility.

10. **ACADEMIC ALERT MEDIA.** To use ALERT Media identified as "Academic" or "AAM", you must be a "Registered Academic Institution." or "RAI" such as a university, college or school. AAM is intended for teaching undergraduates. AAM may be held in a library of RAI to allow student access to educational materials. An AAM licence is not available to non-academic institutions. For qualification-related questions, please contact the Portsmouth Hospitals NHS Trust, ALERT Coordinating Centre, QuAD Building, Queen Alexandra Hospital, Cosham, Portsmouth PO6 3LY.

11. **TERMINATION.** Without prejudice to any other rights, Portsmouth Hospitals NHS Trust may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the ALERT Media and all of its component parts.

This EULA is valid for one year from the time of purchase. Licenses will be automatically renewed and invoiced on 1st April each calendar year or the anniversary of purchase unless cancelled by You in writing in advance.

12. **LIMITED WARRANTY FOR ALERT MEDIA.** Portsmouth Hospitals NHS Trust warrants that the ALERT Media will perform substantially in accordance with the accompanying materials for a period of ninety (90) days from the date of receipt. Any supplements or updates to the ALERT Media, provided to you after the expiration of the ninety day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory.

LIMITATION ON REMEDIES; NO CONSEQUENTIAL OR OTHER DAMAGES. Your exclusive remedy for any breach of this Limited Warranty is as set forth below. Except for any refund elected by Portsmouth Hospitals NHS Trust, YOU ARE NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES, if the ALERT Media does not meet Portsmouth Hospitals NHS Trust's Limited Warranty, and, to the maximum extent allowed by applicable law, even if any remedy fails of its essential purpose. The terms of Section 17 ("Exclusion of Incidental, Consequential and Certain Other Damages") are also incorporated into this Limited Warranty. YOUR EXCLUSIVE REMEDY. Portsmouth Hospitals NHS Trust's and its suppliers' entire liability and your exclusive remedy for any breach of this Limited Warranty or for any other breach of this EULA or for any other liability relating to the ALERT Media shall be, at Portsmouth Hospitals NHS Trust's option from time to time exercised subject to applicable law, (a) return of the amount paid (if any) for the ALERT Media, or (b) repair or replacement of the ALERT Media, that does not meet this Limited Warranty and that is returned to Portsmouth Hospitals NHS Trust with a copy of your receipt. You will receive the remedy elected by Portsmouth Hospitals NHS Trust without charge, except that you are responsible for any expenses you may incur (e.g. cost of shipping the ALERT Media to Portsmouth Hospitals NHS Trust). This Limited Warranty is void if failure of the ALERT Media has resulted from accident, abuse, misapplication, abnormal

use or a virus. Any replacement ALERT Media will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer, and Portsmouth Hospitals NHS Trust will use commercially reasonable efforts to provide your remedy within a commercially reasonable time of your compliance with Portsmouth Hospitals NHS Trust's warranty remedy procedures. To exercise your remedy please contact Portsmouth Hospitals NHS Trust: Attn. Portsmouth Hospitals NHS Trust, ALERT Coordinating Centre (Warranty), QuAD Building, Queen Alexandra Hospital, Cosham, Portsmouth PO6 3LY.

13. DISCLAIMER OF WARRANTIES. The Limited Warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications. Except for the Limited Warranty and to the maximum extent permitted by applicable law, Portsmouth Hospitals NHS Trust and its suppliers provide the ALERT Media and support services (if any) AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, whether express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the ALERT Media, and the provision of or failure to provide support or other services, information, ALERT Media, and related content through the ALERT Media or otherwise arising out of the use of the ALERT Media.

14. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PORTSMOUTH HOSPITALS NHS TRUST OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE ALERT MEDIA, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, ALERT MEDIA, AND RELATED CONTENT THROUGH THE ALERT MEDIA OR OTHERWISE ARISING OUT OF THE USE OF THE ALERT MEDIA, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF PORTSMOUTH HOSPITALS NHS TRUST OR ANY SUPPLIER, AND EVEN IF PORTSMOUTH HOSPITALS NHS TRUST OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. LIMITATION OF LIABILITY AND REMEDIES. Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract or anything else), the entire liability of Portsmouth Hospitals NHS Trust and any of its suppliers under any provision of this EULA and your exclusive remedy hereunder (except for any remedy of repair or replacement elected by Portsmouth Hospitals NHS Trust with respect to any breach of the Limited Warranty) shall be limited to the greater of the actual damages you incur in reasonable reliance on the ALERT Media up to the amount actually paid by you for the ALERT Media or GBP £10.00. The foregoing limitations, exclusions and disclaimers (including Sections 12, 13 and 14) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

16. **APPLICABLE LAW & Jurisdiction.** This agreement is covered under English Law and shall be subject to the exclusive jurisdiction of the English courts.

17. **ENTIRE AGREEMENT; SEVERABILITY.** This EULA (including any addendum or amendment to this EULA which is included with the ALERT Media) is the entire agreement between you and Portsmouth Hospitals NHS Trust relating to the ALERT Media and the support services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the ALERT Media or any other subject matter covered by this EULA. To the extent the terms of any Portsmouth Hospitals NHS Trust policies or programs for support services conflict with the terms of this EULA, the terms of this EULA shall control. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

Signed:	Signed:
Name:	Name:
On behalf of Portsmouth Hospitals NHS Trust	On behalf of
Effective Date:	Effective Date: