

RESELLER AGREEMENT Version: January 2022

This Reseller Agreement (the "**Agreement**") effective on the last signature date set forth below (the "**Effective Date**"), is entered into by and between Agiloft, Inc. ("**Agiloft**" or "**Supplier**"), and the person or entity identified in the signature block for a reseller partner below ("**Reseller**").

1. DEFINITIONS

"**Agiloft Marks**" mean Agiloft's trade names, service marks, trademarks, logos, and indicia of origin and other branding features.

"**Agiloft Technology**" means the Product, Subscription Services and Agiloft Marks.

"**End User**" means the customer purchasing the Subscription Services from Reseller for its own internal use and not for resale to a third party.

"**Terms of Use**" or "**TOU**" means the Terms of Use Agreement available at: <https://www.agiloft.com/agiloft-partner-agreements.htm>

"**End User Order**" means one or more ordering documents between Reseller and End User for the purchase of the Subscription Services or Product.

"**Intellectual Property Rights**" mean all intellectual property rights worldwide arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired, including, without limitation, all: (i) patent and industrial property rights and rights in patent applications, renewals, extensions, combinations, divisions and reissues; (ii) rights associated with works of authorship including but not limited to copyrights, moral rights, mask work rights, and copyright applications and registrations; (iii) rights related to trade secrets; (iv) trademarks, service marks, trade dress and trade names; and (v) any right analogous to those set forth in this Agreement and any other proprietary rights related to intangible property.

"**Order**" means one or more ordering documents between Reseller and Agiloft for Reseller's resale of the Subscription Services or Product.

"**Reseller Marks**" mean Reseller's proprietary trade names, service marks, trademarks, logos, and indicia of origin and other distinctive branding features.

"**Product**" means the Agiloft computer software program provided under a separate addendum to the Agreement that may be entered into by the parties and all improvements, modifications, enhancements, updates, fixes, patches and changes thereto which Agiloft determines, in its sole discretion, not to market as separate stand-alone programs and to make available to Reseller under such addendum (collectively, "**Upgrades**"). The Product also includes user, installation, customization, and reference documentation, which is provided in electronic form only.

"**Subscription Term**" has the meaning set forth in Section 4.1.

"**Subscription Services**" means the services set forth in an Order.

2. APPOINTMENT

2.1 Appointment. During the term of this Agreement, and subject to the terms and conditions of this Agreement, Agiloft hereby appoints Reseller as an Agiloft authorized reseller, on a non-exclusive and worldwide basis, to promote, market and sell the Subscription Services to End Users, and Reseller hereby accepts such appointment. Reseller is an independent contractor, shall not be considered an agent, representative or employee of Agiloft, and shall have no authority to represent, act for, bind or otherwise create any obligation on behalf of Agiloft except as specifically provided in this Agreement.

2.2 Territory & Customer Base. Reseller acknowledges it shall have no exclusive territory and shall not compete unfairly with Agiloft's other authorized resellers of the Subscription Services or Product or with Agiloft. Reseller further understands and agrees Agiloft may freely refer sales leads to Reseller or to Agiloft's other resellers, and that Agiloft itself reserves the right to sell or otherwise provide the Subscription Services or Product directly to end users or other customers. Reseller will not be entitled to any compensation as a result of any such direct sales by Agiloft.

3. LICENSE GRANT AND RESTRICTIONS

3.1 License Grant. Subject to the terms and conditions of this Agreement, Agiloft hereby grants Reseller a non-exclusive, non-sublicensable, non-transferable license during the term of this Agreement to: (a) distribute the Subscription Services solely to End Users; and (b) access and use the Subscription Services solely to provide technical support to End Users. Reseller shall inform End Users that acceptance of the EULA is a prerequisite to accessing and using the Subscription Services. Reseller shall include a link to the EULA in each End User Order. Acceptance of the EULA will be demonstrated by the End User signing or otherwise accepting the End User Order containing the link to the EULA. Upon request, Reseller shall promptly deliver to Agiloft a true, complete, and correct copy of any End User Order. Reseller agrees to inform Agiloft promptly if it is aware of any breach of the EULA. Reseller agrees to enforce the terms of the EULA if Agiloft requests Reseller to do so to protect Agiloft's interest. Reseller accepts, and agrees to be bound by, the terms and conditions of the EULA in connection with its access to, and use of, the Subscription Services under Section 3.1(b).

3.2 Restrictions. Reseller shall not, and shall not permit or authorize End Users or other third parties to: (a) market, sell, or distribute, directly or indirectly, any Agiloft Technology or any products or services deemed competitive by Agiloft; (b) use, copy, modify, or distribute the Agiloft Technology except as expressly permitted in this Agreement; (c) reverse assemble, reverse compile, otherwise translate, or reverse engineer or attempt to discern the components or source code of the Agiloft Technology, except as expressly permitted by law without the possibility of contractual waiver; (d) use any of the Agiloft Technology's components, files, modules, audio-visual content, or related licensed materials separately from that the Agiloft Technology; (e) sublicense, rent, or lease the Agiloft Technology; (f) monitor Agiloft or its products or services, or their performance or functionality, for any benchmarking or competitive purpose; or (g) remove, alter or obscure any proprietary or other notices or labels on, or contained in, the Agiloft Technology or related documentation. Use of the terms "sell", "purchase", and other similar or related terms shall be interpreted in accordance with this Section 3.

3.3 Reserved Rights and Ownership; Feedback. Except as expressly provided in this Agreement, no right, title, or interest in or to the Agiloft Technology is granted, whether express or implied, by Agiloft, and

Agiloft retains all right, title and interest in and to the Agiloft Technology and all Intellectual Property Rights therein and thereto. Notwithstanding anything in this Agreement to the contrary, if Reseller or its End Users provide Agiloft with any feedback or suggestions regarding Agiloft's products or services, Agiloft may freely use or otherwise exploit any such feedback or suggestions for any purpose without restriction.

4. ORDER PROCESS; PAYMENTS

4.1 Order Process. Reseller shall submit an online Order in Agiloft's Partner Hub, on behalf of the End User, as well as a purchase order with Agiloft prior to executing a corresponding End User Order with each End User. All orders placed with Agiloft are subject to acceptance by Agiloft, and Agiloft may reject any order for good and reasonable cause without any liability to Reseller or any other person. Without prejudice to Agiloft's right to reject any Reseller order, Agiloft may reject orders where Reseller's account with Agiloft is past due, or where, in Agiloft's sole discretion, acceptance would result in Reseller exceeding its credit limit or where such resale transaction would give rise to a conflict of interest. Agiloft will not be liable to Reseller or to any other person for damages arising out of or related to any failure to fill orders, any error in filling orders or any delay in delivery. Agiloft will provision all Subscription Services in accordance with the subscription start and end dates set forth in the Order ("**Subscription Term**").

4.2 Payment.

a) Fees. Reseller shall pay to Agiloft all amounts set forth in an Order and purchase order. Reseller is solely responsible for invoicing and collecting amounts due by End User under any End User Order. Reseller is free to determine the fees it charges to End Users.

b) Payment Terms. Except as otherwise set forth in an Order, Reseller shall pay the amounts indicated on an Agiloft invoice within 30 days of the date of Agiloft's invoice. Any payments not made when due will be subject to a service charge of 1.5% per month or the maximum rate permitted by law, whichever is less. The foregoing will in no way limit any other remedies available to Agiloft. Reseller shall pay all of Agiloft's costs and expenses (including but not limited to reasonable attorneys' fees) to enforce and preserve Agiloft's rights under this Section 4.2(b). All payments due will be paid in U.S. dollars without right of set-off or chargeback. All fees are non-refundable.

4.3 Taxes. Fees set forth in an Order do not include any taxes, levies, duties, tariffs or similar governmental assessments of any nature, including but not limited to value-added, sales and use, goods and services, or withholding taxes, assessable by any local, state, provincial, U.S. or foreign jurisdiction (collectively, "**Taxes**"). Reseller is responsible for paying all Taxes associated with its purchases, other than direct taxes on the net income of Agiloft. If Agiloft has the legal obligation to pay or collect Taxes for which Reseller is responsible under this Section 4.3, Agiloft will invoice Reseller for, and Reseller shall pay, such Taxes unless Reseller provides Agiloft with a valid tax exemption certificate authorized by the appropriate taxing authority. Where Taxes are based upon the location(s) receiving the benefit of the Subscription Service or Product, Reseller has an ongoing obligation to notify Agiloft of such location(s) if different from Reseller's business address listed in the applicable Order.

4.4 Suspension. If Reseller's account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, Agiloft reserves the right to suspend provision of the Subscription Services or Product, without liability to Reseller or End User, until such amounts are paid in full.

4.5 Reseller Suspension Request. Reseller may submit a written request to Agiloft to suspend Subscription Services to an End User that is thirty (30) days or more delinquent in payment by following the process below. Such suspension of Subscription Services is at Agiloft's sole discretion.

- Reseller must submit the request in writing to its Agiloft Partner Manager.
- Reseller must provide Agiloft with proof of three written attempts to collect the overdue End User payment since the original invoice due date.
- If Agiloft determines, in its sole discretion, that suspension is warranted, Agiloft will internally process the suspension of Subscription Services, obtain a suspension date ("**Suspension Date**") and notify Reseller of such Suspension Date.
- Reseller shall provide written notification to End User that Subscription Services will be suspended as of the Suspension Date.
- In order to reinstate the Subscription Services, Reseller shall submit written evidence to the Agiloft Partner Manager that End User is current with its payment obligations to Reseller and is otherwise in good standing.

Reseller bears full risk of nonpayment by the End User and shall not be relieved of its obligations to pay fees owed to Agiloft in the event of any such nonpayment.

5. RESELLER OBLIGATIONS

5.1 Advertising and Promotions. Reseller shall: (a) at its own expense, use its best efforts to promote, market and sell the Subscription Services, and, to the extent applicable, the Product, to End Users; and (b) provide to Agiloft, for purposes of review and approval by Agiloft, any and all promotional, advertising and marketing materials related to the Agiloft Technology that Reseller intends to distribute at least thirty (30) days prior to the release of such materials.

5.2 Distribution. Reseller shall: (a) provide professional services (to the extent applicable) and technical support in a timely and professional manner with reasonable diligence, skill and care in conjunction with its provision of the Subscription Services, and, to the extent applicable, the Product, to End Users; (b) provide reasonable assistance to enable Agiloft to verify that End Users are complying with the applicable EULA; (c) provide accurate and adequate information to Agiloft regarding each End User's systems, software and equipment; (d) provide Agiloft necessary access to Reseller's and/or End User's personnel, documentation, records and facilities as needed for Agiloft to timely perform any services under this Agreement; (e) alert Agiloft promptly of any material issues related to the Agiloft Technology (including but not limited to possible infringement issues) and use its best efforts to resolve any customer satisfaction issues that may arise from the use of the Agiloft Technology; (f) advise Agiloft immediately of any legal notices served on Reseller or filed by Reseller that might affect Agiloft or the market prospects of the Agiloft Technology; and (g) notify Agiloft of any known or suspected breaches of Agiloft's Intellectual Property Rights that come to Reseller's attention.

5.3 Compliance with Laws; Anti-Corruption. Reseller is responsible for obtaining any licenses, permits or registrations necessary to resell the Agiloft Technology in any jurisdiction in which End Users are located. Reseller represents and warrants that it shall comply with all international, national, state, regional, and local laws, regulations and rules applicable to Reseller's performance under this Agreement. It is the intent of the parties that no payments or transfers of anything of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or

improper means of obtaining business or any improper advantage. Reseller shall comply, and cause its personnel to comply, with all anti-corruption laws, such as the Foreign Corrupt Practices Act 15 U.S.C. § 78dd-1, et seq. and the United Kingdom Bribery Act.

5.4 Compliance with Export, OFAC and Anti-Boycott Laws and Regulations. The Agiloft Technology and any software, documentation, and related technical data included with, or contained in, the Agiloft Technology, and any products utilizing the Agiloft Technology, software, documentation, or technical data (collectively, "**Regulated Technology**") may be subject to U.S. export control laws and regulations, including, without limitation, the Export Administration Regulations and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("**OFAC**"). Reseller shall not, and shall not permit any third parties to, directly or indirectly, export, reexport, or release any Regulated Technology to any jurisdiction or country to which, or any party to whom, the export, reexport, or release of any Regulated Technology is prohibited by applicable U.S. or foreign law, regulation, or rule. Reseller shall comply with all applicable U.S. and foreign laws, regulations and rules, including, without limitation, all U.S. anti-boycott laws, and complete all required undertakings (including but not limited to obtaining any necessary export license or other governmental approval), prior to exporting, reexporting, or releasing any Regulated Technology.

5.5 Government Customers. In the event of any distribution of the Agiloft Technology to the U.S. Government, Reseller shall inform the U.S. Government that said Agiloft Technology is provided with "Restricted Rights." Any use, duplication or disclosure by the U.S. Government is subject to the restrictions set forth in DFARS 252.227-7013(c)(1), or FAR 52.227-19(c)(2), or FAR 52.227-14 ALT. III, as applicable. All other technical data, including the Agiloft Technology documentation, may be provided with "Limited Rights" as defined in DFAR 252.227-7013(a)(15), or FAR 52.227-14(a) and in Alternative II (JUN 1987) of that clause, as applicable. At its own cost and expense, Reseller shall take all necessary steps, when distributing the Agiloft Technology to sovereign governments other than the U.S. Government, to ensure that Agiloft's Intellectual Property Rights receive protection from such government analogous to U.S. Government rights for commercial software and related documentation developed at private expense.

5.6 Reseller Partner Program Policies. Reseller shall comply with the Agiloft Reseller Partner Program Policies set forth at <https://www.agiloft.com/agiloft-partner-agreements.htm>. The Agiloft Reseller Partner Program Policies are incorporated into this Agreement by reference.

6. CUSTOMER SUPPORT

Unless otherwise specified in an Order, resales do not include Agiloft customer support to End Users. Reseller shall provide Tier 1 Support to its End Users as set forth in the Agiloft Reseller Partner Program Policies. Agiloft shall provide Tier 2 Support to Reseller as set forth in the Agiloft Reseller Partner Program Policies.

7. CONFIDENTIALITY

7.1 Definition of Confidential Information. As used in this Agreement, "**Confidential Information**" means all proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Agiloft's Confidential Information includes, without limitation, the terms and conditions of this Agreement (including but not limited to pricing and other terms reflected in all Orders), customer information and other

business arrangements, the Agiloft Technology, plans (marketing, business, strategic or otherwise), pricing and other financial data, technology and technical information or data, data compilations, screen and product designs, interoperability of the Agiloft Technology with third-party products and software, and business processes. Confidential Information does not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

7.2 Non-Disclosure and Use Restrictions. The Receiving Party shall keep confidential and shall not disclose (or permit any third party to disclose) to any third party any Confidential Information of the Disclosing Party. Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement. If the Receiving Party is required by law or court order to disclose Confidential Information, it will give prior written notice to the Disclosing Party (to the extent legally permitted) and reasonable assistance at the Disclosing Party's cost to contest the disclosure.

7.3 Protection. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event will either party exercise less than reasonable care in protecting such Confidential Information. The Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those in this Agreement for the protection of Confidential Information. Receiving Party shall (a) promptly notify Disclosing Party of any unauthorized possession, use or knowledge, or attempt thereof, of Disclosing Party's Confidential Information by any third party; (b) promptly furnish to Disclosing Party full details of the unauthorized access, possession or use, or attempt thereof; and (c) use reasonable efforts to assist Disclosing Party in investigating or preventing the recurrence of any unauthorized access, possession or use, or attempt thereof, of Disclosing Party's Confidential Information. In the event that Receiving Party breaches, or threatens to breach, the provisions of this Section 7, the parties agree that Disclosing Party would have no adequate remedy at law and would therefore be entitled to immediate injunctive and other equitable relief.

8. TRADEMARKS

8.1 Agiloft Trademarks.

a) **Usage.** Subject to the terms and conditions of this Agreement, Agiloft hereby authorizes Reseller to use the Agiloft Marks during the term of this Agreement solely in connection with the marketing and distribution of the Subscription Services, and, to the extent applicable, the Product, to End Users and only in accordance with Agiloft's trademark usage guidelines, as they are made available to Reseller from time to time. All authorized uses by Reseller of the Agiloft Marks must clearly identify Agiloft as the owner of such Agiloft Marks. Reseller shall not use or display the Agiloft Marks except to identify the Subscription Services, and, to the extent applicable, the Product in advertising, promotional activities, and publications. Agiloft expressly prohibits any direct or indirect use, reference to, or other employment of the Agiloft Marks except

as permitted in this Section 8.1(a). Agiloft may revoke Reseller's right to use the Agiloft Marks at any time in its sole discretion. Upon such notice, Reseller shall use commercially reasonable efforts to remove the Agiloft Marks from Reseller properties.

b) **Ownership.** Reseller acknowledges that, as between Agiloft and Reseller, all Agiloft Marks are and shall remain the exclusive property of Agiloft. All uses of the Agiloft Marks and related goodwill shall inure solely to Agiloft, and Reseller shall obtain no rights or goodwill with respect to any Agiloft Marks, other than as expressly set forth in this Agreement, and Reseller hereby irrevocably assigns to Agiloft all such right, title, interest, and goodwill, if any, in any of the Agiloft Marks. At no time during or after the term of this Agreement shall Reseller challenge or assist others to challenge the Agiloft Marks (except to the extent expressly permitted by applicable law notwithstanding this limitation) or the registration thereof or attempt to register any Agiloft Marks or marks or trade names that are confusingly similar to those of Agiloft, anywhere in the world.

8.2 Reseller Trademarks.

a) **Usage.** Subject to the terms and conditions of this Agreement, Reseller hereby authorizes Agiloft to use the Reseller Marks during the term of this Agreement solely to fulfill its obligations under this Agreement and only in accordance with Reseller's trademark usage guidelines, as they are made available to Agiloft from time to time. Reseller may revoke Agiloft's right to use the Reseller Marks at any time in its sole discretion. Upon such notice, Agiloft will use commercially reasonable efforts to remove the Reseller Marks from Agiloft properties.

b) **Ownership.** Agiloft acknowledges that, as between Reseller and Agiloft, all Reseller Marks are and shall remain the exclusive property of Reseller. All uses of the Reseller Marks and related goodwill shall inure solely to Reseller, and Agiloft shall obtain no rights or goodwill with respect to any Reseller Marks, other than as expressly set forth in this Agreement, and Agiloft irrevocably assigns to Reseller all such right, title, interest, and goodwill, if any, in any of the Reseller Marks. At no time during or after the term of this Agreement shall Agiloft challenge or assist others to challenge the Reseller Marks (except to the extent expressly permitted by applicable law notwithstanding this limitation) or the registration thereof or attempt to register any Reseller Marks or marks or trade names that are confusingly similar to those of Reseller, anywhere in the world.

9. WARRANTIES; WARRANTIES DISCLAIMER

9.1 Warranties. Each party represents and warrants that it has the legal power to enter into this Agreement. In addition to the representation and warranty set forth in Section 5.3 (Compliance with Laws; Anti-Corruption), Reseller represents and warrants that it shall: (a) conduct business in a manner that reflects favorably at all times on the Agiloft Technology and Agiloft's goodwill and reputation; (b) do all things reasonable to promote the value of any Agiloft Marks and the reputation of the Subscription Services and, to the extent applicable, the Products; (c) not disparage Agiloft or the Agiloft Technology in any way nor make false or misleading statements or representations with regard to (i) Agiloft or the Agiloft Technology, (ii) Reseller's relationship with Agiloft, or (iii) Reseller's or Agiloft's obligations as set forth in this Agreement; (d) avoid deceptive, misleading, unethical or illegal practices, and not knowingly solicit orders from any End User that engages in deceptive, misleading, unethical or illegal practices; (e) not represent itself as the developer of the Agiloft Technology or as Agiloft itself; (f) provide professional services (to the extent applicable) and

technical support in a timely and professional manner with reasonable diligence, skill and care in conjunction with its provision of the Subscription Services, and, to the extent applicable, the Product, to End Users; and (g) not publish reviews of the Agiloft Technology without Agiloft's prior written consent and Agiloft represents and warrants that (h) it shall take commercially reasonable steps prevent Agiloft Technology from containing any malicious code, virus or similar type of code as of the date of the Agreement; (i) it will not materially decrease the functionality or security of the Agiloft Technology during the Agreement and (j) the Agiloft Technology will perform in material compliance with the applicable documentation integration with Other Applications. Any warranties herein are not cumulative and shall be extended to the final party as determined by a court of competent jurisdiction to which these warranties apply, whether this be Reseller or the End User exercising its rights.

9.2 Warranties Disclaimer. SUBJECT TO 9.1, ALL AGILOFT TECHNOLOGY IS DELIVERED TO RESELLER "AS IS". TO THE MAXIMUM EXTENT PERMITTED BY LAW, AGILOFT AND ITS THIRD-PARTY PROVIDERS DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, TITLE AND NON-INFRINGEMENT. AGILOFT DOES NOT WARRANT THE RELIABILITY, TIMELINESS, SUITABILITY, OR ACCURACY OF THE AGILOFT TECHNOLOGY OR THE RESULTS RESELLER OR END USER MAY OBTAIN BY USING THE AGILOFT TECHNOLOGY. AGILOFT DOES NOT WARRANT UNINTERRUPTED OR ERROR- FREE OPERATION OF THE AGILOFT TECHNOLOGY OR THAT AGILOFT WILL CORRECT ALL ERRORS OR DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD-PARTY ACCESS. AGILOFT DOES NOT WARRANT THAT THE AGILOFT TECHNOLOGY WILL BE COMPATIBLE WITH ANY PARTICULAR PLATFORM. AGILOFT DISCLAIMS ALL FAILURES, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET. SOME JURISDICTIONS MAY PROHIBIT A DISCLAIMER OF WARRANTIES, AND RESELLER MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. IF THIS SECTION 9.2 OR ANY PART OF THIS SECTION 9.2 IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, THEN ALL EXPRESS AND IMPLIED WARRANTIES AND CONDITIONS AFFECTED SHALL BE LIMITED IN DURATION TO A PERIOD OF THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE AGREEMENT, AND NO WARRANTIES OR CONDITIONS SHALL APPLY AFTER THAT PERIOD. ANY WARRANTY MADE BY RESELLER REGARDING THE AGILOFT TECHNOLOGY OTHER THAN THE LIMITED WARRANTY SET FORTH ABOVE SHALL BE RESELLER'S SOLE RESPONSIBILITY.

10. LIMITATION OF LIABILITY

NEITHER AGILOFT NOR ITS THIRD-PARTY PROVIDERS WILL BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, LOSS OF DATA OR INTERRUPTION OF BUSINESS, NOR FOR INDIRECT, SPECIAL, PUNITIVE, COVER, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE, EVEN IF AGILOFT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT WILL AGILOFT'S OR ITS THIRD-PARTY PROVIDERS' LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY RESELLER DURING THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. RESELLER ACKNOWLEDGES THAT AGILOFT HAS SET ITS FEES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT

THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATIONS OF LIABILITY AND DISCLAIMERS SET FORTH IN THIS AGREEMENT SHALL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CERTAIN DAMAGES. ACCORDINGLY, SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS OF LIABILITY MAY NOT APPLY TO RESELLER.

11. INDEMNIFICATION

11.1 Indemnification by Agiloft. Agiloft shall (a) defend, or at its option, settle any claim, demand, action, or legal proceeding made or brought against Reseller by a third party alleging that the Subscription Services, or, to the extent applicable, the Product, as delivered by Agiloft directly infringe the Intellectual Property Rights of such third party (an **"IP Claim"**) and pay any final judgment or award directly resulting from such IP Claim to the extent such judgment or award is based upon such alleged infringement those damages agreed to by Agiloft in a monetary settlement of such IP Claim and (b) defend, or at its option, settle any claim, demand, action, or legal proceeding made or brought against Reseller from the unauthorized disclosure of Customer data directly related to the permitted use of the Subscription Services. Agiloft's obligations under this Section 11.1 will not apply to the extent that an IP Claim is based on (I) End User's data or Reseller's or a third party's technology, software, materials, data or business processes; (II) use of the Subscription Services or Product in combination with a product or service not provided by Agiloft where the Subscription Services or Product would not itself be infringing; (III) Subscription Services or Product that has been modified in any way by anyone other than Agiloft or other than according to Agiloft's instructions; (IV) provision of the Subscription Services or Product to comply with designs, requirements, or specifications required by or provided by Reseller or End User; (V) use of a superseded or altered release of a Product; (VI) use of a Product in an application or environment not described in the Product documentation; or (VII) any use of the Subscription Services or Product not in compliance with this Agreement. In the event of an IP Claim, Agiloft may, at its option and expense, (A) replace or modify the Subscription Services or Product so that they are no longer the subject of an infringement claim, (B) obtain a right for Reseller to resell the Subscription Services or Product in accordance with this Agreement, or (C) terminate the subscription for the allegedly infringing Subscription Services or the license for the allegedly infringing Product and refund to Reseller any prepaid fees for the remainder of the Subscription Term or Product license term, as applicable. This Section 11.1 states the sole and exclusive remedy of Reseller concerning any actual or alleged violation of a third party's Intellectual Property Rights.

11.2 Indemnification by Reseller. Reseller shall defend, indemnify and hold Agiloft and its affiliates and Agiloft's and Agiloft's affiliates' respective officers, directors, employees, contractors and agents (each of the foregoing, an **"Agiloft Indemnified Party"**) harmless from and against any claims, demands, damages and liabilities (including, without limitation, reasonable attorneys' fees) arising out of or related to the use, promotion, or distribution of the Subscription Services or Product by Reseller or the End Users (a **"Use Claim"**). If Reseller does not assume direction and control of the defense of any Use Claim, or if the interests of Reseller and an Agiloft Indemnified Party conflict in any material respect, Agiloft may assume direction and control of its defense and Reseller shall pay all reasonable costs and expenses incurred in connection with such defense.

11.3 Procedure. As a condition to the indemnifying party's obligations under Sections 11.1 and 11.2, the party seeking indemnification must (a) promptly give written notice of the IP Claim or Use Claim (each, a "**Claim**") to the indemnifying party; (b) give the indemnifying party sole control of the defense and settlement of the Claim (provided that the indemnifying party shall not settle any Claim with an admission of liability of the indemnified party without the prior written approval of that party); and (c) provide to the indemnifying party, at the indemnifying party's expense, all reasonable assistance. Notwithstanding the foregoing, the indemnified party will have the right to participate at its own expense in the defense of any Claim or related settlement negotiations using counsel of its own choice.

12. TERM; TERMINATION

12.1 Term. This Agreement will commence on the Effective Date and remain in effect for a period of two (2) years following such date unless otherwise terminated earlier under this Agreement. Thereafter, this Agreement will automatically renew for additional one (1) year periods, unless either party provides at least fifteen (15) days prior written notice to the other party of its intent not to renew.

12.2 Termination. This Agreement may be terminated by a party if (a) the other ceases to do business, or otherwise terminates its business operations; or (b) the other breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days of written notice describing the breach. In addition, either party may terminate this Agreement at any time by providing the other party with ninety (90) days prior written notice. Notwithstanding the foregoing, Agiloft reserves the right to immediately terminate this Agreement if it determines, in its sole and good faith discretion, that Reseller has engaged in or is engaging in any conduct that is or tends to be detrimental to Agiloft or Agiloft's business or reputation. This Agreement will terminate automatically if either party (w) makes a general assignment for the benefit of creditors, (x) is adjudicated bankrupt, (y) files a voluntary petition for bankruptcy or reorganization, or has a petition filed against it for an adjudication in bankruptcy or reorganization and such petition is not dismissed within sixty (60) days, or (z) applies for or permits the appointment of a receiver, trustee or custodian for any of its property or assets.

12.3 Effect of Termination. Upon any expiration or termination of this Agreement and subject to Section 12.4, (a) all rights and licenses granted by Reseller and Agiloft under this Agreement will terminate, (b) Reseller shall immediately discontinue all marketing, promotion and advertising of the Subscription Services and all use of the Agiloft Marks, (c) Reseller shall not offer or execute any further End User Orders; and (d) each party will immediately return, or securely destroy, all Confidential Information of the other party in its possession, custody or control in whichever form held (including, without limitation, all copies or embodiments of the Confidential Information). Any failure of Reseller to abide by this Section 12.3 shall entitle Agiloft to bring appropriate action, including but not limited to injunctive action. Agiloft shall not be liable to Reseller solely because of the termination of this Agreement in accordance with this Section 12, including, without limitation, for compensation, reimbursement, or damages due to the loss of prospective profits or anticipated sales, or due to expenditures, investment, leases, or commitments in connection with the business or goodwill of Reseller. Notwithstanding any termination of this Agreement, Reseller's obligations to pay for all Subscription Services delivered to Reseller will continue after termination. No termination under this Agreement will be deemed a waiver or limitation of a party's other remedies.

12.4 End User Orders. End User Orders executed in accordance with this Agreement prior to the expiration or termination of this Agreement will remain in effect in accordance with their terms, but without renewals or extensions. The terms and conditions setting forth Reseller's obligations under this Agreement will continue to be in effect. Reseller may continue to access and use the Subscription Services, or, to the

extent applicable, the Product solely to meet its technical support obligations in such End User Orders, and upon the expiration or termination of such obligations, Section 12.3 will apply.

12.5 Survival. Sections 3.2 (Restrictions), 3.3 (Reserved Rights and Ownership; Feedback), 4 (Order Process; Payments), 7 (Confidentiality), 8.1(b) (Agiloft Trademarks - Ownership), 8.2(b) (Reseller Trademarks - Ownership), 9.2 (Warranties Disclaimer), 10 (Limitation of Liability), 11 (Indemnification), 12.3 (Effect of Termination), 12.4 (End User Orders), 12.5 (Survival), and 13 (General Terms) will survive any termination or expiration of this Agreement.

13. GENERAL TERMS

13.1 Force Majeure. Except for payment obligations, neither party is liable under this Agreement for non-performance caused by events or conditions beyond that party's control if the party makes reasonable efforts to perform.

13.2 Relationship of Parties. Use of the word "partner" in this Agreement is solely for convenience. This Agreement is not intended to create a relationship such as a partnership, franchise, joint venture, agency, or employment relationship. Neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party. All financial and other obligations associated with each party's business are the sole responsibility of such party.

13.3 Notices. All written notices required by this Agreement must be delivered to the addresses specified below, either in person or by a means evidenced by a delivery receipt. All notices will be effective upon receipt.

If to Agiloft:
Agiloft Inc.
460 Seaport Court, Suite 200
Redwood City, CA 94063
Attn: Legal Department

If to Reseller:
NAME
Address 1
Address 2
Attn:

Agiloft and Reseller shall send all notices to each other to the respective addresses (or to any other address stipulated in writing), by personal delivery, facsimile, certified mail, or International Courier. Notices shall be effective forty-eight (48) hours after delivery, or forty-eight (48) hours after transmission, if sent by facsimile.

13.4 Assignment. Neither party may assign this Agreement, or otherwise transfer any of its rights or obligations under this Agreement, without the prior written consent of the other party; provided, however, either party may assign this Agreement without the other party's consent to a parent or subsidiary of such party or in the case of a merger or sale of all or substantially all of its assets or stock. Subject to the foregoing,

this Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns.

13.5 Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly so provided in writing. The failure of either party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by either party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a party to enforce each and every such provision thereafter. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the waiver is to be asserted.

13.6 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On such determination that any term or other provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

13.7 Construction; Entire Agreement. The parties acknowledge that they have participated jointly in the negotiation and drafting of this Agreement. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, proposals or representations, whether written or oral, concerning the subject matter of this Agreement. Agiloft may change the terms and conditions of this Agreement on a going-forward basis by providing Reseller with one month's prior written notice. The changes apply as of the effective date specified in the notice. Reseller acknowledges its agreement to the changes by continuing to perform as a Reseller after the effective date of such notice. Otherwise, no supplement, modification or amendment of any provision of this Agreement shall be effective unless in writing and signed by authorized representatives of both parties. The terms of this Agreement shall prevail over any conflicting or inconsistent standard terms or conditions on any purchase order or invoice.

13.8 Governing Law and Arbitration. This Agreement and the rights and obligations of the parties under this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded by the parties. The rights and obligations of the parties under this Agreement shall be governed by and construed under the laws of the State of California without reference to conflict of laws principles. Any dispute or claim arising out of or in connection with this Agreement or the performance, breach or termination thereof, shall be finally settled by binding arbitration in San Mateo County, California under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said rules. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, (a) either party may apply to any court of competent jurisdiction for injunctive relief without breach of this arbitration provision; and (b) the arbitrators shall have no power or authority to hear or provide an award on any claims arising out of or related to Intellectual Property Rights.

13.9 Dispute Resolution. Except for a breach for which immediate injunctive relief is a permitted remedy, the parties shall use their good faith efforts to resolve amicably any and all disputes, controversies, claims or differences arising out or related to this Agreement.

13.10 WAIVER OF JURY TRIAL. 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.

13.11 Legal Expenses. The prevailing party in any action or arbitration proceeding brought by one party against the other and arising out of or related to this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its reasonable legal expenses, including but not limited to court costs and arbitration fees and reasonable attorneys' fees.

13.12 Equitable Relief. Reseller recognizes and agrees that if it breaches any obligation under this Agreement, Agiloft may suffer immediate and irreparable harm for which monetary damages alone would not be a sufficient remedy, and that, in addition to all other remedies, Agiloft shall be entitled to equitable relief, including, without limitation, injunctive relief or specific performance, to remedy a breach or threatened breach of this Agreement and to enforce this Agreement, and Reseller hereby waives any and all defenses and objections it may have on the grounds of jurisdiction and venue, including, but not limited to, lack of personal jurisdiction and improper venue, and waives any requirement for the securing or posting of any bond in connection with such remedy.

13.13 Publicity. Within thirty (30) days of the execution of this Agreement, Reseller shall publicize its status as an Agiloft Partner on its website and display the Agiloft logo there (subject to compliance with Section 8.1 (Agiloft Trademarks)). Reseller agrees that Agiloft may identify Reseller as a reseller of the Agiloft Technology and display Reseller's name and logo in connection with such identification on Agiloft's website and in its marketing materials.

13.14 Expenses. Except as specifically stated in this Agreement, each party will bear its own expenses, costs and fees (including, without limitation, attorneys' and auditors' fees) in connection with the transactions contemplated under this Agreement (including, without limitation, the preparation, execution and delivery of, and compliance with, this Agreement).

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

For:	Agiloft	Reseller
Company	Agiloft, Inc.	
Type	Delaware Corporation	
Corporate Tax ID	71-0907214	
Telephone	650-587-8615	
Facsimile	650-745-1209	
Street Address	460 Seaport Blvd, #200	
City	Redwood City	
State	CA	
Zip Code	94063	
Printed Name		
Title		
Date		
Signature		