

## SERVICES PARTNER AGREEMENT Version: January 2022

This Agiloft Services Partner Agreement (the "**Agreement**") effective on the last signature date set forth below (the "**Effective Date**"), is entered into by and between Agiloft, Inc. ("**Agiloft**"), and the person or entity identified in the signature block for a services partner below ("**Services Partner**"). (Services Partner together with Agiloft, the "**Parties**", and each a "**Party**").

WHEREAS, Agiloft wishes for Services Partner to provide implementation, integration, custom development, consulting and other professional services ("**Partner Services**") to third parties in connection with Agiloft's hosted software product, and Services Partner wishes to provide Partner Services to third parties in connection with Agiloft's hosted software product; and

WHEREAS, the Parties wish to work together for the above purpose (the "**Alliance**").

NOW, therefore, in consideration of the foregoing, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. Definitions.

- 1.1. "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, "control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.2. "**Agiloft Marks**" mean Agiloft's trade names, service marks, trademarks, logos, and indicia of origin and other branding features.
- 1.3. "**Agreement**" has the meaning set forth in the preamble to this Agreement.
- 1.4. "**Alliance**" has the meaning set forth in the preamble to this Agreement.
- 1.5. "**Client**" means an individual or entity (including, without limitation, any of its Affiliates): (i) that has entered into an Agiloft Hosted Service Agreement with Agiloft and one or more order forms under such agreement to access and use the Hosted Service; and (ii) to whom Partner Services are provided.
- 1.6. "**Confidential Information**" has the meaning set forth in Section 6.1.
- 1.7. "**Effective Date**" has the meaning set forth in the preamble to this Agreement.
- 1.8. "**End User**" means an individual or entity who is designated by Services Partner to use the Partner Hub or the Hosted Service, as applicable.
- 1.9. "**Indemnified Party**" has the meaning set forth in Section 10.1.

- 1.10. "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.
- 1.11. "Hosted Service"** means Agiloft's hosted software product made commercially available by Agiloft on a subscription basis under the Agiloft Hosted Service Agreement available at <https://www.agiloft.com/agreements/agiloft-hosted-sla.pdf> (or such other hyperlink, as may be updated by Agiloft) or under the Agiloft Hosted Service Agreement executed between the Parties, and all related and underlying technology, software, content and documentation.
- 1.12. "Order"** means the ordering document entered into between Services Partner and Agiloft from time to time to effect Services Partner's payment of fees associated with its participation in the Partner Program or receipt of certain additional Partner Program benefits and any addenda to such ordering document.
- 1.13. "Partner Hub"** means a dedicated web portal that Agiloft makes available in connection with the Partner Program, and all related and underlying technology, software, content and documentation.
- 1.14. "Party"** and **"Parties"** have the meaning set forth in the preamble to this Agreement.
- 1.15. "Partner Program"** has the meaning set forth in Section 3.1.
- 1.16. "Partner Services"** has the meaning set forth in the preamble to this Agreement.
- 1.17. "Program Policies"** has the meaning set forth in Section 3.1.
- 1.18. "Prospect"** means a potential Client.
- 1.19. "Services Partner"** has the meaning set forth in the preamble to this Agreement.
- 1.20. "Services Partner Marks"** mean Services Partner's proprietary trade names, service marks, trademarks, logos, and indicia of origin and other distinctive branding features.
- 1.21. "Term"** has the meaning set forth in Section 15.1.

## **2. Operation of the Alliance.**

**2.1. Representatives and Meetings.** Upon execution of this Agreement, each Party shall appoint one or more representatives who shall be responsible for conducting regular meetings to consider and

advise on possible business opportunities, exchange information of mutual interest, manage disputes that may arise between the Parties, and handle other similar matters arising during the Term. Such meetings will be held on at least a [weekly/monthly/[OTHER FREQUENCY]] basis but shall be held as often as required in order to maximize the efficiency and viability of the Alliance. A Party shall notify the other Party of any changes to its appointment of its representative(s). Each Party will facilitate contacts and the dissemination of information between the Parties by providing the other with opportunities to present and demonstrate its offerings at the appropriate sales and marketing, technical, and other meetings and conferences as may be mutually agreed.

**2.2.Opportunity Identification.** The Parties shall work together to identify potential customers and clients to whom Partner Services may be provided. In furtherance thereof, each Party will provide the other with information on its ability to provide required products and services, the pricing of such products and services, and whatever other information that may be reasonably requested in order to pursue mutually beneficial business opportunities, joint bids, or other similar initiatives. Each Party shall advise potential customers and clients that may have need of its or the other Party's products and services of their availability and seek to maximize the sale of same on terms and conditions authorized by both Parties. Each Party shall promptly notify the other Party of any proposals it is making to a Prospect on behalf of the Alliance in order to prevent any conflicting proposal by the other Party.

**2.3.Prospects.** When a Prospect is an existing client or client contact of one of the Parties (the "Introducing Party"), and not of the other Party, at the time of the Prospect's introduction to the non-Introducing Party, the non-Introducing Party shall respect the said client relationship and the Introducing Party shall, in such cases, act as the primary client liaison with the Prospect. The Introducing Party shall also act as the primary client liaison for such Prospect when it becomes a Client.

**2.3.1. Agiloft as Introducing Party.** Where Agiloft is the Introducing Party with respect to a Prospect, Services Partner shall not propose products or services to the Prospect that compete with Agiloft's products or services.

**2.3.2. Services Partner as Introducing Party.** Where Services Partner is the Introducing Party with respect to a Prospect, Agiloft shall not propose services to the Prospect that compete with the Partner Services contemplated by the Parties to be provided by Services Partner to the Prospect, unless Agiloft is requested by the Prospect to do so.

**2.3.3. Other Considerations.** Notwithstanding the foregoing, the Parties acknowledge and agree that the decision ultimately rests with the Prospect or Client with regards to which services, as well as implementation provider and process, it will employ or engage. The Parties agree to work in good faith to accommodate and support each other in the sales cycle. In addition, the Parties agree that certain opportunities may not be possible or desirable for either Party to pursue as contemplated by this Agreement.

**2.4.No Referral Fees.** Neither Party shall, under this Agreement, receive any referral fee, commission, royalty or other similar fee from the sale or license to Prospect or Client of the other Party's products

or services.

**2.5. Personnel Responsibility.** Any persons or entities employed or engaged by a Party shall be that Party's employees or contractors. Each Party assumes responsibility for the actions of its employees and contractors under this Agreement and will be solely responsible for (i) their supervision, daily direction and control, and wage rates, (ii) withholding income taxes and providing unemployment and disability benefits, and (iii) the manner and means through which the work under this Agreement will be accomplished.

### 3. Agiloft Services Partner Program.

**3.1. Enrollment.** Services Partner shall enroll in the Agiloft Services Partner Program ("**Partner Program**") and comply with the Agiloft Services Partner Program Policies set forth at <https://www.agiloft.com/agiloft-partner-agreements.htm>, or at such other hyperlink as may be updated by Agiloft (the "**Program Policies**"), and which are incorporated into this Agreement by reference. Services Partner's participation in the Partner Program will serve as an opt-in for it to receive Agiloft's marketing communications. Services Partner shall provide appropriate notices to, and obtain appropriate consents (if required) from, any individuals who are signed up to the Partner Program on Services Partner's behalf. Services Partner may elect to opt-out from receiving Agiloft's marketing communications by contacting Agiloft directly.

**3.2. Partner Hub.** Subject to the terms and conditions of this Agreement and the Program Policies, Services Partner may, during the Term, access the Partner Hub at <https://wiki.agiloft.com> (or at such other hyperlink, as may be updated by Agiloft). The Partner Hub may provide varying levels of access based on a Services Partner's partner level designation as described in the Program Policies. Services Partner agrees to, and shall comply with, the Partner Hub Terms of Service as set forth on **Exhibit A**, which is incorporated into this Agreement by reference.

**3.3. Services Partner Affiliates.** An Affiliate of Services Partner may hold itself out as a Services Partner only with the prior written approval of Agiloft, which may be provided or withheld at Agiloft's sole discretion. The status of such Affiliate as a Services Partner may be revoked at any time by Agiloft in Agiloft's sole discretion. Services Partner shall be responsible for any and all acts and omissions of its Affiliates. Alternately, an Affiliate of Services Partner that desires to be a member of the Partner Program may separately enter into a Services Partner Agreement with Agiloft and enroll in the Partner Program.

**3.4. Credit Check.** On or around the Effective Date, Agiloft may require that Services Partner go through a credit check. Services Partner agrees to such credit check. Agiloft shall have the right to perform additional credit checks at any time during the Term. If Services Partner does not meet Agiloft's credit qualifications, Agiloft shall have the right to terminate this Agreement upon five (5) days written notice (email being sufficient) with no further obligations to the Services Partner.

**3.5. General Restrictions.** Services Partner shall not access the Partner Hub or participate in the Partner Program if it (i) does not agree with the terms and conditions of this Agreement or (ii) is or becomes

(in whole or in part) a direct competitor of Agiloft. Furthermore, Services Partner shall not access the Partner Hub or join the Partner Program for the purposes of monitoring Agiloft or its products or services or the performance or functionality thereof, or for any benchmarking or competitive purposes.

**3.6.No Distribution or Resale Rights.** The Partner Program does not provide distribution rights to the Services Partner for Agiloft's products or services, nor does it contemplate any kind of reseller relationship between Agiloft and Services Partner. Reseller relationships are governed by separate agreements and application processes.

### **3.7.Partner Program Fees.**

**3.7.1. Payment.** Services Partner shall pay to Agiloft all fees set forth in an Order. Except as otherwise set forth in an Order, Services Partner 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. Services Partner 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 3.7. All payments due will be paid in U.S. dollars without the right of set-off or chargeback. All fees are non-refundable.

**3.7.2. 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**"). Services Partner is responsible for paying all Taxes associated with its purchases, other than direct taxes on the net income of Agiloft.

**3.7.3. Suspension.** If Services Partner'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 Services Partner's access to, and use of, the Partner Hub, without liability, until such amounts are paid in full.

**4. Professional Services.** From time to time, Services Partner and Agiloft may agree that Agiloft provide professional services to Services Partner in order to further the Alliance. Such provision and receipt of professional services will be governed by the terms and conditions set forth on **Exhibit B** and which are incorporated into this Agreement by reference.

**5. Agiloft Hosted Service.** Services Partner acknowledges and agrees that Services Partner's access to, and use of, the Hosted Service in connection with Services Partner's activities under this Agreement will be governed by the terms and conditions of the Agiloft Hosted Service Agreement available at <https://www.agiloft.com/agreements/agiloft-hosted-sla.pdf> (or such other hyperlink, as may be updated by Agiloft) or the Agiloft Hosted Service Agreement executed by the Parties. Trial access to the Hosted Service will be governed by the terms and conditions set forth on **Exhibit C**, which is incorporated into this Agreement by reference.

## 6. Confidentiality.

**6.1. Confidential Information.** As used in this Agreement, "**Confidential Information**" means all 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, the Partner Hub, any data or analysis provided by Agiloft to a Services Partner or End User, any performance information related to the Partner Hub or any product or service of Agiloft, customer information and other business arrangements, Agiloft's software applications, third party software applications, any non-public information that Services Partner has access to through the Partner Hub, any services provided by Agiloft, any customer data that Services Partner has access to by virtue of its participation in the Partner Program, plans (marketing, business, strategic or otherwise), pricing and other financial data, technology or technical information or data, data compilations, screen and product designs, interoperability of any product or service of Agiloft with third party products or software, and business processes. Services Partner's Confidential Information includes, without limitation, Services Partner's software applications, business and marketing plans, technology and technical information, product designs, and business processes. The Confidential Information of each Party includes, without limitation, the discussions regarding the Alliance. Except for Agiloft's Confidential Information that constitutes customer data or information, 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.

**6.2. Non-Disclosure and Non-Use.** 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 except to perform its obligations under this Agreement. 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 the Receiving Party's Affiliates and the Receiving Party's and its Affiliates' respective (i) employees and contractors who need such access for the purpose of the Receiving Party performing its obligations under 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; and (ii) legal counsel and accountants who are under a duty of confidentiality (such parties, collectively, "**Representatives**"). The Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives' as if such breach was a breach by the Receiving Party. 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 6, 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.

**6.3. Compelled Disclosures.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## 7. Ownership Rights; Feedback.

**7.1. Ownership Rights.** Under no circumstances shall a Party, as a result of this Agreement, obtain any ownership interest or other right, title, or interest in or to any Intellectual Property Rights or Confidential Information of the other Party, whether by implication, estoppel, or otherwise, including, but not limited to, any items controlled or developed by the other Party, or delivered by the other Party, at any time pursuant to this Agreement.

**7.2. Feedback.** Services Partner may from time to time provide suggestions, enhancement requests, recommendations, corrections, comments, or other information or feedback to Agiloft in connection with, or otherwise regarding, Agiloft's or its Affiliates' products or services or the operation of Agiloft or its Affiliates (collectively, "**Feedback**"). Feedback also includes, without limitation, data generated by Services Partner's and End Users' use of the Partner Hub and the Hosted Service. Notwithstanding anything to the contrary in this Agreement, in the event that Services Partner or any End User provides Feedback to Agiloft, Services Partner hereby grants Agiloft a non-exclusive, irrevocable, perpetual, transferable, sublicensable, royalty-free, fully paid-up, worldwide license to use, copy, modify, disclose, create derivative works based upon, and otherwise exploit such Feedback for any and all purposes (including, without limitation, incorporation into, or distribution with, its products or services).

## 8. Trademarks.

### 8.1. Agiloft Trademarks.

**8.1.1. Usage.** Subject to the terms and conditions of this Agreement, Agiloft hereby authorizes Services Partner to use the Agiloft Marks during the Term solely in connection with the Alliance and only in accordance with Agiloft's trademark usage guidelines, as they are made available to Services Partner from time to time. Services Partner shall not modify any Agiloft Mark or incorporate any Agiloft Mark into any trade name, brand name, domain name, or other source-identifying term. Services Partner shall not bid on, or purchase, any keyword which is an Agiloft

Mark in any keyword advertising service (such as, for example, Google AdWords) except with Agiloft's prior written consent. Services Partner shall not publish any advertisement that includes any Agiloft Mark without prior review and approval of Services Partner's proposed ad and/or related website by Agiloft's legal and search engine marketing teams. Services Partner may forward requests for review and approval to [marketing@agiloft.com](mailto:marketing@agiloft.com). All authorized uses by Services Partner of the Agiloft Marks must clearly identify Agiloft as the owner of such Agiloft Marks. Agiloft expressly prohibits any direct or indirect use, reference to, or other employment of the Agiloft Marks except as expressly permitted in this Section 8.1.1. Agiloft may revoke Services Partner's right to use the Agiloft Marks at any time in its sole discretion, and Services Partner shall use commercially reasonable efforts to promptly remove the Agiloft Marks from Services Partner properties.

**8.1.2. Ownership.** Services Partner acknowledges that, as between Agiloft and Services Partner, 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 Services Partner shall obtain no rights or goodwill with respect to any Agiloft Marks, other than as expressly set forth in this Agreement, and Services Partner 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 shall Services Partner 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. Services Partner Trademarks.**

**8.2.1. Usage.** Subject to the terms and conditions of this Agreement, Services Partner hereby authorizes Agiloft to use the Services Partner Marks during the Term in connection with: (i) the Alliance, (ii) identifying and promoting Services Partner's participation in the Partner Program; and (iii) Agiloft's rights, duties and obligations under this Agreement. Services Partner may revoke Agiloft's right to use the Services Partner Marks at any time in its sole discretion upon thirty (30) days written notice to Agiloft, provided that no such revocation will require the recall of any previously published or distributed materials.

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

## **9. Representations and Warranties; Warranty Disclaimer.**



**9.1. Representations and Warranties.** Services Partner represents and warrants that: (i) it shall perform the Partner Services in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards; (ii) it shall only use personnel having the requisite certifications (as set forth in the Program Policies), knowledge, skill, experience, and qualifications to perform the Partner Services; (iii) the Partner Services and related work product and deliverables will be free from material defects and will conform to applicable specifications and requirements; and (iv) it has all authority, right, title and license as may be necessary to provide the Partner Services and related work product and deliverables, and a Prospect's or Client's possession, access to, or use of, such services, work product or deliverables will not result in any violation or infringement of any Intellectual Property Rights. In addition, Services Partner represents and warrants that it shall: (a) not engage in any deceptive, misleading, illegal, or unethical practices or conduct; (b) not make any representations or warranties concerning Agiloft's products or services, except as set forth in marketing collateral or documentation furnished by Agiloft; (c) not disparage Agiloft, any present or former officer, director or employee of Agiloft, or any product or service of Agiloft; (d) conduct business in a manner that reflects favorably at all times on the good name, good will, and reputation of Agiloft; (e) comply with all applicable federal, state, and local laws and regulations; and (f) not, without the prior written consent of Agiloft, conduct any negotiations, conclude any contract, or make any representation, warranty, or promise on Agiloft's behalf, or take any action binding upon Agiloft.

**9.2. WARRANTY DISCLAIMER.** Services Partner represents and warrants that: (i) it shall perform the Partner Services in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards; (ii) it shall only use personnel having the requisite certifications (as set forth in the Program Policies), knowledge, skill, experience, and qualifications to perform the Partner Services; (iii) the Partner Services and related work product and deliverables will be free from material defects and will conform to applicable specifications and requirements; and (iv) it has all authority, right, title and license as may be necessary to provide the Partner Services and related work product and deliverables, and a Prospect's or Client's possession, access to, or use of, such services, work product or deliverables will not result in any violation or infringement of any Intellectual Property Rights. In addition, Services Partner represents and warrants that it shall: (a) not engage in any deceptive, misleading, illegal, or unethical practices or conduct; (b) not make any representations or warranties concerning Agiloft's products or services, except as set forth in marketing collateral or documentation furnished by Agiloft; (c) not disparage Agiloft, any present or former officer, director or employee of Agiloft, or any product or service of Agiloft; (d) conduct business in a manner that reflects favorably at all times on the good name, good will, and reputation of Agiloft; (e) comply with all applicable federal, state, and local laws and regulations; and (f) not, without the prior written consent of Agiloft, conduct any negotiations, conclude any contract, or make any representation, warranty, or promise on Agiloft's behalf, or take any action binding upon Agiloft.

## **10. Indemnification.**

**10.1. Indemnification by Services Partner.** Services Partner shall indemnify, hold harmless, and defend Agiloft and its Affiliates and the respective managers, officers, directors, employees, contractors and agents of Agiloft and its Affiliates (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including, without limitation, professional fees

and reasonable attorneys' fees, that are incurred by Indemnified Party or awarded against Indemnified Party (collectively, "**Losses**"), arising out of or related to a third party claim or demand arising out of or related to: (i) any breach of this Agreement by Services Partner or Services Partner's employees, contractors or agents; (ii) any grossly negligent or more culpable act or omission of Services Partner or its employees, contractors or agents (including, without limitation, any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement; (iii) any bodily injury, death of any person, or damage to real or tangible personal property caused by the acts or omissions of Services Partner or its employees, contractors or agents; (iv) any failure by Services Partner to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this Agreement; (v) access to, or use of, the Partner Hub by Services Partner or any of the End Users; (vi) Services Partner Data; (vii) the Partner Services; or (viii) Services Partner's relationship, agreement, conduct or interactions with a Prospect or Client.

**10.2. Indemnification by Agiloft.** Agiloft will defend Services Partner against any claim, demand, suit or proceeding made or brought against Services Partner by a third party alleging that the Partner Hub or Deliverables infringe or misappropriate the Intellectual Property Rights of such third party (a "**Claim Against Services Partner**"), and will indemnify Services Partner from any damages (including reasonable attorney's fees) finally awarded against Services Partner as a result of such Claim Against Services Partner or for amounts paid by Services Partner under a settlement approved by Agiloft in writing, provided Services Partner (i) promptly gives Agiloft written notice of the Claim Against Services Partner, (ii) gives Agiloft sole control of the defense and settlement of the Claim Against Services Partner (except that Agiloft may not settle any Claim Against Services Partner unless the settlement unconditionally releases Services Partner of all liability), and (iii) gives Agiloft all reasonable assistance, at Agiloft's expense. If Agiloft receives information about an infringement or misappropriation claim related to the Partner Hub or Deliverables, Agiloft may, in its sole discretion, and at no cost to Services Partner (a) modify or replace the Partner Hub or Deliverables so that they are no longer claimed to infringe or misappropriate; (b) obtain the right for Services Partner to continue using the Partner Hub or Deliverables in accordance with this Agreement; or (c) terminate Services Partner's rights to the Partner Hub or Deliverables and provide the Services Partner, as applicable, with a refund for any prepaid unexpired term with respect to the Partner Hub or a refund of prepaid fees for the Deliverables. The above defense and indemnification obligations do not apply to the extent a Claim Against Services Partner arises from or is related to (1) use of the Partner Hub or Deliverables in combination with a product or service, or data, content or processes, not provided by Agiloft; (2) modification of the Partner Hub or Deliverables other than by Agiloft; (3) provision of the Partner Hub or Deliverables to comply with designs, requirements, or specifications required by or provided by Services Partner; or (4) any failure to use the Partner Hub or Deliverables in accordance with this Agreement or instructions provided by Agiloft. This Section 0 states Services Partner's sole and exclusive remedy for any actual or alleged violation of a third party's Intellectual Property Rights. For the purposes of this paragraph, "Deliverables" has the meaning set forth in **Exhibit B**.

**11. Insurance.** Services Partner shall, maintain in full force and effect, the following insurance:

**11.1.** Worker's Compensation insurance as required by statute, and Employer's Liability insurance with limits of not less than \$1,000,000 per accident, injury or disease;

- 11.2.** Commercial General Liability Insurance including Contractual coverage, Product and Completed Operations coverage, and Broad Form Vendors coverage with a combined single limit of not less than \$1,000,000;
- 11.3.** If use of a vehicle is required to provide the services to a Prospect or Client, Automobile Liability Insurance covering all motor vehicles owned, hired, or rented by Services Partner's employees or contractors, with a combined single limit of liability for each accident of not less than \$1,000,000; and
- 11.4.** Professional Liability Insurance (Errors and Omissions) with coverage of not less than \$1,000,000.

**12. 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 SERVICES PARTNER DURING THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. SERVICES PARTNER 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 SERVICES PARTNER.

### **13. Compliance with Laws.**

- 13.1. General.** Services Partner shall, and shall ensure that its employees, officers, directors, and any third parties performing activities on Services Partner's behalf, comply with all applicable laws and regulations, including, without limitation, trademark and copyright laws and ICANN policies and procedures governing domain names ("**Applicable Laws**") and shall not engage in any deceptive, misleading, illegal or unethical marketing activities, or activities that otherwise may be detrimental to Agiloft or Agiloft's customers or potential customers, Prospects, Clients or the public.
- 13.2. Anti-Corruption Laws.** Without limiting Section 13.1 above, Services Partner, and all of its employees, officers, and directors, and any third parties working for Services Partner or performing activities on Services Partner's behalf (i) shall comply with the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and other applicable anti-corruption laws and regulations (collectively, the "**Anti-Corruption Laws**"); and (ii) shall keep accurate books, accounts, and records. It is the intent of the Parties that no payments or transfers of anything of value be made in connection with this Agreement that have the purpose or effect of public, commercial or other bribery, or acceptance of or

acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage.

### **13.3. Termination or Suspension; No Liability.**

**13.3.1. Termination or Suspension.** Services Partner hereby acknowledges and agrees that Agiloft may terminate or suspend this Agreement immediately by written notice without any liability: (i) upon any violation by Services Partner of this Section 13; or (ii) if circumstances occur causing Agiloft to believe, in good faith, that Services Partner, or any of its owners, directors, or employees, or third parties with which it was or is engaged (including, but not limited to, sub-contractors, sub-distributors, integrators, or other third parties) has engaged in illegal conduct or unethical business practices, including, without limitation, any potential violations of the Anti-Corruption Laws. Termination or suspension by Agiloft under this Section 13.3 will be in addition to, and not in lieu of, Agiloft's other rights and remedies.

**13.3.2. No Liability.** If Agiloft terminates or suspends the Agreement under this Section 13.3, Agiloft may suspend or withhold any payments to Services Partner hereunder. Agiloft will not be liable for any claims, losses, or damages arising out of or related to failure of Services Partner to comply with Anti-Corruption Laws or this Agreement or related to the termination or suspension of this Agreement under this Section 13.3, and Services Partner shall indemnify and hold Indemnified Party harmless against any such claims, losses, or damages.

**13.4. Training.** Services Partner agrees that it has provided or will provide training and information to its officers, directors, employees, and any third parties utilized by Services Partner in connection with its performance of this Agreement as necessary to ensure full compliance with the Anti-Corruption Laws and any other applicable laws and any obligations set forth in this Section 13.

**13.5. Notifications.** Services Partner agrees that it shall promptly inform Agiloft's legal department ([legal@agiloft.com](mailto:legal@agiloft.com)) in writing should it or any of its officers, directors, or employees learn of, or suspect, any act or circumstance that may violate applicable laws in connection with this Agreement.

**13.6. Government Officials.** Services Partner affirms that (i) none of its owners, directors, employees and, to its knowledge, third parties involved in the performance of this Agreement is a Government Official or a Close Family Member of a Government Official with the ability, or appearance of ability, to influence the performance of this Agreement; or that (ii) it has fully described any such relationship in writing to Agiloft's legal department ([legal@agiloft.com](mailto:legal@agiloft.com)) and received written acknowledgement from Agiloft's legal department of such disclosure. For the purposes of this Agreement, (a) "**Government Official**" means an officer or employee of any government; officer or employee of any public international organization; officer or employee of any department, agency, or instrumentality of any government or of any public international organization; officer or employee of any government-owned or government-controlled company; a political party; a political party official; or anyone, whether a private person or otherwise, acting in an official capacity on behalf of any of the above or of any government entity, and (b) "**Close Family Member of a Government Official**" means a Government Official's spouse, a Government Official's or the spouse's grandparents, parents, siblings, children, nieces, nephews, aunts, uncles, and first cousins; the spouse of any of the

foregoing; or any other person who shares the same household with the Government Official. In the event that during the Term, there is a change in the information described in this paragraph, Services Partner shall promptly disclose such change to Agiloft's legal department in writing at [legal@agiloft.com](mailto:legal@agiloft.com).

**13.7. Export Controls.** Services Partner shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement. Services Partner represents that it is not named on any U.S. government denied-parties list. Services Partner shall not access or use the Partner Hub or the Hosted Service, or any Confidential Information or benefits of the Partner Program provided to it under this Agreement, in a U.S.-embargoed country or region (currently the Crimea region, Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or governmental regulation.

#### **14.No Hire and Non-Solicitation.**

**14.1. No-Hire and Non-Solicitation.** During the Term and for one year after termination or expiration of this Agreement, each Party agrees not to hire or directly or indirectly solicit, induce, recruit, encourage or otherwise endeavor to cause or attempt to cause any employee or consultant of the other Party to terminate their employment relationship. If this Section 14.1 is breached, the breaching Party agrees to pay, as liquidated damages, the amount of \$150,000.00 USD per violation. This provision does not restrict the right of either Party to solicit or recruit generally in the media (including, without limitation, online media) and does not prohibit either Party from hiring personnel who answer any advertisement or who otherwise voluntarily apply for hire without having been initially personally solicited or recruited by either Party.

**14.2. Enforceability.** The Parties acknowledge that the duration and scope of the restrictions contained in Section 14.1 are reasonable. Upon a determination that any term or provision of this Section 14 is invalid, illegal, or unenforceable, the court may modify this Section 14 to substitute the maximum duration or scope legally permissible under such circumstances to the greatest extent possible to effect the restrictions originally contemplated by the Parties hereto.

#### **15.Term, Termination, and Survival.**

**15.1. Term.** This Agreement will have an initial term of three (3) years following the Effective Date ("**Initial Term**") unless sooner terminated as set forth below or in Section 13.3. After the Initial Term, Agiloft shall have the option to renew the Agreement for an additional one (1) year renewal term thirty (30) days before the end of the Initial Term ("**Renewal Term**") based on the Services Partner's performance review (Initial Term and Renewal Term, collectively, the "**Term**").

**15.2. Termination for Cause; Suspension.** Either Party may immediately terminate this Agreement upon written notice to the other Party if: (i) the other Party becomes the subject of a petition in bankruptcy or other proceeding relating to insolvency, or makes an assignment for the benefit of creditors, (ii) the other Party publicly announces (including by reporting it in SEC filings) that it has reached agreement to acquire or be acquired by the terminating Party's competitor, (iii) the other

Party breaches its confidentiality obligations under this Agreement or infringes or misappropriates the terminating Party's Intellectual Property Rights, (iv) it determines, based on one or more Prospect's or Client's complaints, that the other Party's actions or statements creates a significant risk of harm to the terminating Party's reputation or customer relationships, (v) the other Party has committed fraud or misrepresentation with respect to entering into and/or the performance of this Agreement, (vi) a Party learns of circumstances that give it reason to believe that the other Party has engaged in illegal conduct or unethical business practices in connection with performance of this Agreement, (vii) the other Party, or any of its owners or employees responsible for providing services under this Agreement, have become the target of an investigation or prosecution by any governmental authority for alleged corruption or other violation of laws, or (viii) the other Party has violated Section 13 (Compliance with Laws) above including but not limited to, in the case of Agiloft, Services Partner's violating Agiloft's rights under trademark and copyright laws and/or ICANN policies and procedures governing domain names. Subject to the foregoing, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party of such other Party's material breach if the breach is not cured during that period. Agiloft may suspend Services Partner's Partner Program benefits during any period in which Services Partner is in breach of this Agreement, including, without limitation, breach of any payment obligations. Such suspension, or termination of this Agreement for cause, shall be in addition to, and not in lieu of, either Party's other rights and remedies.

**15.3. Termination for Convenience.** Either Party may terminate this Agreement for convenience upon thirty (30) days' written notice if there are no Statements of Work (as defined in **Exhibit B**) outstanding.

**15.4. Effect of Termination.** Upon any termination or expiration of this Agreement:

**15.4.1.** Services Partner shall cease to be a participant in the Partner Program, all of Services Partner's rights to receive the Partner Program benefits and to use the Agiloft Marks shall cease and access to the Partner Hub shall terminate;

**15.4.2.** Services Partner shall, and shall cause all End Users to, immediately cease any and all use of and access to the Partner Hub and to securely delete any and all documentation and related software. Services Partner acknowledges that, following termination, Services Partner and each End User will have no further access to the Partner Hub and any Services Partner Data;

**15.4.3.** Each Party shall promptly return to the other Party or dispose of, as mutually agreed, all marketing or training materials, software, documentation and other materials of the other Party, including, but not limited to, all Confidential Information, Agiloft Materials (as defined in **Exhibit B**) and Services Partner Materials (as defined in **Exhibit B**), and certify that such disposal has occurred;

**15.4.4.** Each Party shall cease using any name, trademark, trade name, logo or service mark of the other Party;

**15.4.5.** Both Parties shall cease promotional activities under this Agreement;



- 15.4.6.** Provided that the termination of this Agreement is not for cause, it shall not result in a diminution or modification of obligations of either Party to provide ongoing services to a Client or with respect to the Parties' obligations, if any, relating to any proposals issued prior to such termination, provided that such proposals have been issued no more than six months prior to the date of termination of this Agreement;
- 15.4.7.** If the Agreement is terminated by Agiloft, no further Partner Services projects in connection with the Alliance shall be bid or started by Services Partner unless agreed to in writing by Agiloft; and
- 15.4.8.** Sections 6, 7, 8.1.2, 8.2.2, 9.2, 9.2, 12, 13.3.2, 14, 15.4 and 16, Sections 3.2, 3.4, and 4 of **Exhibit A**, Sections 2, 3, 4.2, 5, 6.3, 6.4, and 6.5 of **Exhibit B**, Section 7 of **Exhibit C**, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement. Except where an exclusive remedy is specified in this Agreement, the exercise of either Party of any remedy under this Agreement, including, without limitation, suspension or termination, will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

## 16. General Terms.

- 16.1. 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.
- 16.2. Relationship of Parties.** Use of the word "partner" in this Agreement is solely for convenience. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between Services Partner and Agiloft, notwithstanding the use of the term "partner" in this Agreement. Neither Party shall act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other Party. Neither Party shall represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other Party, nor represent the other Party as agent, employee, franchisee, or in any other capacity. Services Partner shall not make any proposals, promises, warranties, guarantees, or representations on Agiloft's behalf or in Agiloft's name. All financial and other obligations associated with each Party's business are the sole responsibility of such Party. There are no third party beneficiaries to this Agreement.
- 16.3. Non-Exclusivity.** Nothing in this Agreement shall limit or restrict either Party from entering into or continuing any agreement or other arrangement with any other Party, whether similar to this Agreement in nature or scope. Moreover, each Party shall remain free to provide products and services to any client or prospective client so long as the terms of this Agreement are not violated.
- 16.4. Competing Applications.** Subject to Agiloft's and Services Partner's respective rights and obligations under this Agreement, Agiloft acknowledges that Services Partner and/or other parties

may develop and publish applications that are similar to or otherwise compete with Agiloft's applications, products or services, and Services Partner acknowledges that Agiloft and/or other parties may develop and publish applications that are similar to or otherwise compete with Services Partner's applications, products or services.

**16.5. Cooperation on Disputes.** Services Partner shall reasonably cooperate with Agiloft in regard to any inquiry, dispute or controversy in which Agiloft may become involved and of which Services Partner may have knowledge, including, but not limited to, providing relevant documents and financial information to Agiloft and providing access to Services Partner's personnel for interviews by Agiloft. Such obligation shall continue after the expiration or termination of this Agreement.

**16.6. 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 Services Partner:

NAME  
Address 1  
Address 2  
Attn:

Agiloft and Services Partner 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.

**16.7. Assignment.** Neither Party may assign this Agreement, or otherwise transfer or delegate 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 to its parent or subsidiary or in the case of a merger or sale of all or substantially all of its assets or stock, without the other Party's consent. 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.

**16.8. 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.

**16.9. 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 effect 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.

**16.10. 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 and replaces 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 Services Partner with one month's prior written notice. The changes apply as of the effective date specified in the notice. Services Partner acknowledges its agreement to the changes by continuing to perform as a Services Partner 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. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit hereto, the terms of such exhibit will prevail. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Order, the terms of the Order will prevail. The Parties agree that any term or condition stated in a Services Partner's purchase order or in any other Services Partner order documentation (excluding Orders) is void.

**16.11. 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, (i) either Party may apply to

any court of competent jurisdiction for injunctive relief without breach of this arbitration provision; and (ii) 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.

**16.12. 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.

**16.13. 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.

**16.14. 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.

**16.15. Equitable Relief.** Services Partner 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 Services Partner 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.

**16.16. Publicity.** Within thirty (30) days of the execution of this Agreement, Services Partner 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)). Services Partner agrees that Agiloft may identify Services Partner as a services partner and display Services Partner's name and logo in connection with such identification on Agiloft's website and in its marketing materials.

**16.17. Expenses.** Except as specifically stated in this Agreement, each Party shall 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	Services Partner
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		

## Exhibit A

### Partner Hub Terms of Service

These Partner Hub Terms of Service (this "**Exhibit A**") govern Services Partner's and End Users' access to, and use of, the Partner Hub. The terms and conditions of the Agreement are incorporated into this **Exhibit A** by reference. All capitalized terms not defined in this **Exhibit A** have the meanings given them in the Agreement.

#### 1. Definitions.

**1.1. "End User Account"** has the meaning set forth in Section 3.1 below.

**1.2. "Services Partner Data"** means any data, information or content provided by Services Partner and End Users to the Partner Hub, in connection with access to, or use of, the Partner Hub.

**2. Access to Partner Hub.** Subject to the terms and conditions of this **Exhibit A** and the Agreement, Services Partner may, solely for its internal business use, access and use the Partner Hub and any associated documentation. Services Partner shall provide Agiloft with all information, access, assistance, and materials as reasonably required for Agiloft to activate, operate and provide the Partner Hub. If Services Partner and any of its End Users uses any third party service with the Partner Hub, (i) Services Partner authorizes Agiloft to provide the third party service with access to and use of Services Partner Data, (ii) Agiloft will not be responsible for any act or omission of the third party, including, without limitation, any third party's use, disclosure, modification or deletion of Services Partner Data, and (iii) Agiloft does not warrant or support any service provided by the third party. Agiloft may update the Partner Hub from time to time.

#### 3. Use of Partner Hub.

**3.1. End Users.** Use of and access to the Partner Hub is permitted only by the number of End Users communicated by Agiloft to Services Partner in writing (email being sufficient). Each individual End User will have an End User specific account through which such End User accesses and uses the Partner Hub (an "**End User Account**"). An End User Account shall not be shared or used by more than one individual user but may be reassigned from time to time in the case of termination or change of employment, job status or job function. Services Partner may designate one or more End Users to serve as "Administrators." Administrators will have the ability to access, disclose, restrict or remove information in or from and otherwise terminate an End User's access to their End User Account as and to the extent made available by the functionality of the Partner Hub. Services Partner is solely responsible for notifying End Users of terms and policies relevant to use and for their compliance therewith. Services Partner is responsible for (i) maintaining the confidentiality of user IDs, passwords and access to Administrator and End User accounts, (ii) managing access to End User Accounts, and (iii) ensuring Services Partner's use of the Partner Hub (and use by each End User and each Administrator) complies with the terms of this **Exhibit A** and the Agreement. For greater clarity, Agiloft's responsibilities do not extend to the internal management or administration of the Partner Hub for Services Partner. Services Partner shall prevent unauthorized use of the Partner Hub by its End Users and terminate any unauthorized use of the Partner Hub. Services Partner is responsible



for any and all actions taken using End User Accounts and passwords. Services Partner is responsible for compliance by each End User with all of the terms and conditions of this **Exhibit A** and the Agreement and agrees that any such use of the Partner Hub by an End User is for the sole benefit of Services Partner.

**3.2. Proprietary Rights.** Services Partner acknowledges that no ownership rights are being conveyed to Services Partner. Services Partner agrees that Agiloft or its suppliers retain all right, title and interest, and all Intellectual Property Rights, in and to the Partner Hub and any modifications thereto and derivative works based thereon. All rights in and to the Partner Hub not expressly granted under this **Exhibit A** are reserved by Agiloft or its suppliers. Services Partner retains all right, title and interest, and all Intellectual Property Rights, in and to Services Partner Data as provided to Agiloft. By uploading or otherwise providing Services Partner Data, Services Partner hereby grants Agiloft and its subcontractors a right to use the Services Partner Data, in whole or in part, for the purpose of providing the Partner Hub to Services Partner, or improving the Partner Hub generally. Services Partner acknowledges that data generated by Services Partner's or an End User's use of the Partner Hub may be used to provide and improve the Partner Hub.

**3.3. Third Party Components.** Third party components (which may include open source software) of the Partner Hub may be subject to separate license agreements. Such separate license agreements will govern for the specific included third party components of the Partner Hub, or use of the Partner Hub (as may be applicable).

**3.4. Restrictions.** Services Partner shall not, and shall not permit or authorize End Users or third parties to: (i) sell, resell, license, sublicense, distribute, make available, rent, lease or commercially exploit the Partner Hub in any way; (ii) except as expressly permitted in this **Exhibit A**, use, copy, modify, or distribute the Partner Hub, or provide access to, or make available, the Partner Hub to any third party; (iii) use the Partner Hub to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third party privacy rights; (iv) use the Partner Hub to send or store any code, files, scripts, agents or programs intended to do harm (e.g., viruses, worms, time bombs, or Trojan horses); (v) modify, or prepare derivative works based on, the Partner Hub; (vi) create Internet "links" to the Partner Hub, or "frame" or "mirror" the Partner Hub; (vii) permit direct or indirect access to or use of the Partner Hub in a way that circumvents a contractual usage limit; (viii) interfere with, or disrupt, the integrity or performance of the Partner Hub or the data contained therein; (ix) access the Partner Hub in order to build a competitive product or service or to benchmark with a non-Agiloft product or service; (x) reverse assemble, reverse compile, translate, reverse engineer, or attempt to discern the Partner Hub or the components or source code of the Partner Hub, except as expressly permitted by law without the possibility of contractual waiver; (xi) share data or content from the Partner Hub with competitors of Agiloft; (xii) attempt to gain unauthorized access to the Partner Hub (or data, information or content contained in, or made available by or through, the Partner Hub) or related systems or networks; (xiii) copy the Partner Hub or any part, feature, function or user interface thereof; (xiv) recruit or market directly to other services partners of Agiloft using data, content or contact information obtained through the Partner Hub; (xv) use any of the Partner Hub's components, files, modules, audio-visual content, or related licensed materials separately from the Partner Hub; (xvi) remove, alter or obscure any proprietary or other notices, markings or labels on, or contained in, the Partner Hub or related documentation; or (xvii)

violate the Agiloft Acceptable Use and Copyright Policy available at <https://www.agiloft.com/agiloft-partner-agreements.htm> (or such other hyperlink, as may be updated by Agiloft), and which is incorporated into this **Exhibit A** by reference.

**3.5.Suspension.** Agiloft reserves the right to immediately suspend access to, or use of, the Partner Hub by Services Partner or any End User if Agiloft believes that Services Partner's or any End User's violation of this **Exhibit A** or the Agreement, or any use by Services Partner or any End User of the Partner Hub in breach of this **Exhibit A** or the Agreement, may cause Agiloft liability or threaten the security, integrity or availability of the Partner Hub. Agiloft will use commercially reasonable efforts under the circumstances to provide Services Partner with an opportunity to remedy such violation or threat prior to any such suspension. Notwithstanding anything to the contrary in this **Exhibit A** or the Agreement, if there is a Security Emergency, then Agiloft may automatically suspend access to, or use of, the Partner Hub. Agiloft will make commercially reasonable efforts to narrowly tailor the suspension as needed to prevent or terminate the Security Emergency. "**Security Emergency**" means: (i) use of the Partner Hub that does or could disrupt the operation of the Partner Hub, other users' use of the Partner Hub or the infrastructure used to provide the Partner Hub; or (ii) unauthorized third party access to the Partner Hub.

**4. WARRANTY DISCLAIMER.** THE PARTNER HUB IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. NEITHER AGILOFT NOR ITS SUPPLIERS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. AGILOFT DOES NOT WARRANT THAT THE PARTNER HUB WILL BE ERROR-FREE OR THAT THE PARTNER HUB WILL WORK WITHOUT INTERRUPTIONS. AGILOFT WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF AGILOFT. AGILOFT MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT ANY SERVICES PARTNER DATA OR INFORMATION OR DATA IN OR FROM ANY END USER ACCOUNT, OR THE ACCURACY OF ANY REPORTS OR DATA GENERATED BY THE PARTNER HUB. AGILOFT HAS NO RESPONSIBILITY OR LIABILITY FOR THE DELETION OR FAILURE TO STORE ANY SERVICES PARTNER DATA.

**5. Privacy.** The Agiloft Privacy Policy, available at <https://www.agiloft.com/privacy.htm> (or such other hyperlink, as may be updated by Agiloft), applies to all Services Partner Data and use of the Partner Hub by Services Partner and End Users. By using the Partner Hub, Services Partner consents to transfer, processing, and storage of Services Partner Data. Section 6 (Confidentiality) of the Agreement does not apply to Services Partner Data.

## Exhibit B

### Professional Services Terms

These Professional Services Terms (this "**Exhibit B**") governs Agiloft's provision, and Services Partner's receipt of, professional services under this Agreement. The terms and conditions of the Agreement are incorporated into this **Exhibit B** by reference. All capitalized terms not defined in this **Exhibit B** have the meanings given them in the Agreement.

- 1. Services.** Services Partner and Agiloft desire to establish a contractual mechanism under which Agiloft will provide advisory and other professional services to Services Partner. Each such contract for services will be referred to hereinafter as a "**Statement of Work**" or "**SOW**" and the services set forth in such Statement of Work to be provided by Agiloft will be referred to hereinafter as the "**Services**". Each Statement of Work will identify the following: (i) the Services description; (ii) the project manager of each Party; (iii) Services Partner's responsibilities; (iv) Agiloft's responsibilities, including the tasks to be performed, the completion criteria of such tasks and any deliverables to be provided to Services Partner; (v) a schedule for estimated completion of Services by Agiloft; and (vi) fees for Services. The format of such Statements of Work will be as set forth in **Exhibit B-1** or in a substantially similar document. Upon execution by both Parties, each Statement of Work will be deemed a part of this **Exhibit B**. Changes to a Statement of Work will require a written change order ("**Change Order**") signed by the Parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule. A Change Order will be deemed incorporated by reference into the applicable Statement of Work.
- 2. Fees and Payment; Suspension.** Services Partner shall pay all fees specified in all SOWs ("**Fees**"). Except as otherwise provided in a SOW, all Fees are quoted in United States dollars. Except as expressly set forth otherwise in the SOW, Fees invoiced are non-cancellable and non-refundable. Any Fees paid pursuant to a SOW will not offset any fees due under any other SOW. All amounts are due and payable thirty (30) days from the invoice date, unless otherwise stated in an SOW. Unpaid invoices not the subject of a written good faith dispute are subject to a finance charge at the rate of one percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, plus all reasonable expenses of collection. If Services Partner's account is thirty (30) days or more overdue (except with respect to charges 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 Services or any other services or products, without liability, until such amounts are paid in full.
- 3. Taxes.** Unless explicitly set forth otherwise, Fees set forth in a SOW do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). In the event that Agiloft is legally obligated to collect Taxes, such taxes will be set forth in the applicable invoice. Services Partner is responsible for paying all Taxes, excluding only taxes based on Agiloft's income and personal property. If Agiloft has the

legal obligation to pay or collect Taxes for which Services Partner is responsible, the appropriate amount shall be invoiced to and paid by Services Partner unless Services Partner 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 Services, Services Partner has an ongoing obligation to notify Agiloft of such location(s).

#### 4. Personnel.

**4.1. Project Manager.** Services Partner and Agiloft each shall designate a project manager(s) ("**Project Manager**") in each Statement of Work who shall be the principal point of contact between them for all day-to-day matters relating to such Statement of Work. Services Partner and Agiloft may designate new Project Managers of comparable qualifications by written notice to the other Party.

**4.2. Independent Relationship.** Personnel will, at all times, be considered employees or agents of the Party providing such personnel and will not, for any purpose, be considered employees or agents of the other Party. Each Party shall assume full responsibility for the actions or inactions of the personnel it provides, and shall be solely responsible for the supervision, direction, control, salaries, workers' compensation coverage, disability and other insurance, benefits, and all obligations required by law relating to its personnel.

#### 5. Intellectual Property Rights.

##### 5.1. Definitions.

5.1.1. "**Agiloft Materials**" mean information, data, content, software, hardware, systems, property and other materials provided by or on behalf of Agiloft.

5.1.2. "**Deliverables**" mean literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that Agiloft may deliver to Services Partner as part of the provision of Services and that are expressly identified as "Deliverables" in a Statement of Work.

5.1.3. "**Services Partner Materials**" mean information, data, content, software, hardware, systems, property and other materials provided by Services Partner.

**5.2. Services Partner Ownership.** As between the Parties, Services Partner retains ownership of Services Partner Materials.

**5.3. Agiloft Ownership.** As between the Parties, Agiloft owns all rights, title, and interest in the Services and any and all Agiloft Materials and Deliverables (and any modifications, translations, or derivatives therein or thereto), and all Intellectual Property Rights therein and thereto. Services Partner agrees that any modifications it makes to the Deliverables or Agiloft Materials or any derivative works it prepares based on the Deliverables or Agiloft Materials (and all Intellectual Property Rights therein and thereto) (collectively, "**Services Partner Modifications**") will be the sole and exclusive property of Agiloft. Services Partner hereby irrevocably assigns to Agiloft all rights, title and interests, and all

Intellectual Property Rights, in and to the Services Partner Modifications.

**5.4. License to Deliverables.** Agiloft grants to Services Partner a non-exclusive, worldwide, royalty-free, perpetual license to use, reproduce, and prepare derivative works of the Deliverables solely for use in connection with the Services delivered to Services Partner under this **Exhibit B** or otherwise for Services Partner's internal use only. Services Partner shall not provide access to, or make available, to any third party any Deliverables or Agiloft Materials.

**5.5. Reservation of Rights.** Neither Party grants any license to the other Party under this **Exhibit B** other than the licenses expressly granted in this **Exhibit B**. No license is to be implied from any provision of this **Exhibit B** or the Agreement.

## **6. Representations and Warranties; Disclaimer.**

**6.1. Warranty by Agiloft.** Agiloft warrants that (i) the Services provided under this **Exhibit B** will be performed in a professional manner and in conformance with the description of Services in the SOW and (ii) the Deliverables will function in accordance with their specifications set forth set forth in the SOW. If Services Partner does not provide notice of acceptance or rejection of a Deliverable to Agiloft within two (2) business days of the delivery of a Deliverable or re-delivery of a rejected Deliverable, the Deliverable will be deemed accepted. A warranty period will extend two (2) weeks after all Deliverables have been completed and accepted. A Services Partner's sole remedy, and Agiloft's sole liability and responsibility, for breach of any warranty in this Section 6.1 will be for Agiloft to re-perform the Services in question, including creation or preparation of the applicable Deliverables. Agiloft is not responsible for any delay in performing or failure to perform Services caused by Services Partner's failure to timely provide access, licenses or approvals to the extent required by this Agreement or a Statement of Work or Services Partner's failure to perform Services Partner's responsibilities under the Agreement.

**6.2. Representations and Warranties by Services Partner.** Services Partner represents and warrants that it has the right to use, disclose, license, disseminate and grant access to the systems, software, information, specifications and data that it has provided access to or will provide access to Agiloft in order for Agiloft to perform the Services and prepare the Deliverables, if any, identified in each Statement of Work. Services Partner further represents and warrants that possession and use of such systems, software, information, specifications and data by Agiloft under the terms and conditions of this Agreement will not constitute an infringement or misappropriation of any Intellectual Property Right or a violation of any privacy laws.

**6.3. DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, AGILOFT AND ITS THIRD PARTY PROVIDERS MAKE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, WITH RESPECT TO ANY SERVICES PROVIDED HEREUNDER. AGILOFT DOES NOT WARRANT THE RELIABILITY, TIMELINESS, SUITABILITY, OR ACCURACY OF THE DELIVERABLES OR THE RESULTS SERVICES PARTNER MAY OBTAIN BY USING THE DELIVERABLES. IN PARTICULAR, AGILOFT DOES NOT WARRANT

UNINTERRUPTED OR ERROR-FREE OPERATION OF THE DELIVERABLES, OR THAT (IF APPLICABLE) THE DELIVERABLES WILL CONTINUE TO FUNCTION WITH THE HOSTED SERVICE AFTER THE EXPIRATION OF ANY APPLICABLE WARRANTY PERIOD, OR THAT AGILOFT WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCESS.

**6.4. Conflicting Provisions.** This **Exhibit B** and all of the Statements of Work, exhibits, schedules, and documents attached hereto or executed in connection herewith are intended to be read and construed in harmony with each other, but in the event any provision in any Statement of Work conflicts with any provision of this **Exhibit B** or the Agreement, then this **Exhibit B** and the Agreement will be deemed to control unless the Statement of Work contains an explicit statement that it is intended to amend **Exhibit B** or the Agreement.

**6.5. Effect of SOW Expiration or Termination.** Upon any expiration or termination of a Statement of Work, each Party shall promptly return to the other Party or dispose of, as mutually agreed, all materials of the other Party provided under such Statement of Work, including, but not limited to, all Confidential Information, Agiloft Materials and Services Partner Materials, and certify that such disposal has occurred.



## Exhibit B-1

### Form of Statement of Work

Date: \_\_\_\_\_ Statement of Work Number: \_\_\_\_\_

This Statement of Work is being executed under a Services Partner Agreement ("**Agreement**") previously entered into by \_\_\_\_\_ ("**Services Partner**") and Agiloft, Inc. ("**Agiloft**") as of \_\_\_\_\_, 20\_\_\_\_, and the terms and conditions of such Agreement apply in all respects.

**1. Services Description.** \_\_\_\_\_.

**2. Project Manager.** Services Partner's Project Manager will be \_\_\_\_\_. Agiloft's Project Manager will be \_\_\_\_\_.

**3. Services Partner's Responsibilities.**

**3.1. Access to Personnel, Systems, and Facilities.** Services Partner shall provide, maintain and make available to Agiloft, at Services Partner's expense and in a timely manner, the following personnel and resources, and such other additional personnel and resources, as Agiloft may from time-to-time reasonably request in connection with Agiloft's performance of the Services:

**3.1.1.** Qualified Services Partner personnel or representatives who will be designated by Services Partner to: (i) consult with Agiloft on a regular basis in connection with the Services, (ii) provide Agiloft, within two business days of Agiloft's request, with information, data, licenses, consents, decisions and approvals necessary to perform the Services, and (iii) help resolve Services issues and escalate issues within Services Partner's organization for resolution;

**3.1.2.** Access to Services Partner's systems for Agiloft personnel as necessary for performance of the Services; and

**3.1.3.** Access to Services Partner's premises and workspace for Agiloft personnel as necessary for performance of those portions of the Services to be performed at Services Partner's premises.

**3.2.** [Other Services Partner Responsibility]

**3.3.** [Other Services Partner Responsibility]

**4. Agiloft's Responsibilities.**

**4.1. Task 1.**

**4.2.**

**4.2.1. Description.**

\_\_\_\_\_

**4.2.2. Completion Criteria.** This task will be complete when Agiloft has \_\_\_\_\_.

**4.2.3. Deliverables** \_\_\_\_\_ **(if any).**

**4.3.Task 2.**

**4.3.1. Description.**

\_\_\_\_\_

**4.3.2. Completion Criteria.** This task will be complete when Agiloft has \_\_\_\_\_.

**4.3.3. Deliverables** \_\_\_\_\_ **(if any).**

**5. Estimated Schedule.** The Services will be performed consistent with the estimated schedule below. Both Parties agree to make reasonable efforts to carry out their respective responsibilities in order to achieve the following schedule.

**5.1.Start Date:** \_\_\_\_\_

**5.2.Estimated Completion Date:** \_\_\_\_\_

**6. Fees.** The fees for the Services performed under this Statement of Work will be: \_\_\_\_\_.

AGREED:

Agiloft, Inc.		[Legal Name of Services Partner Entity]	
By:		By:	
Name:		Name :	
Title:		Title:	

## Exhibit C

### **Hosted Service Trial Access Terms**

These Hosted Service Trial Access Terms (this "**Exhibit C**") govern Services Partner's access to, and use of, the Hosted Service on a trial basis. The terms and conditions of the Agreement are incorporated into this **Exhibit C** by reference. All capitalized terms not defined in this **Exhibit C** have the meanings given them in the Agreement.

- 1. Access to Hosted Service.** Subject to the terms and conditions of this **Exhibit C** and the Agreement and at Agiloft's sole discretion, Agiloft will provide access to the Hosted Service to Services Partner at no cost. Agiloft grants Services Partner a non-exclusive, non-transferable, limited right to access and internally use the Hosted Service solely for Services Partner's (i) evaluation purposes, and (ii) non-production demonstration purposes to Prospects, all of the foregoing subject to any additional limitations set forth by Agiloft. Agiloft may terminate Services Partner's access to the Hosted Service for any reason at any time.
- 2. Use of Hosted Service.** Services Partner is responsible for all activities that occur under End User accounts. Services Partner shall: (i) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Service, and notify Agiloft promptly of any such unauthorized use; and (ii) comply with all applicable local, state, federal, and foreign laws in using the Hosted Service, (including, but not limited to, GDPR compliance) and, if using the Hosted Service outside of the United States, not use the Hosted Service in a manner that would violate any federal or state laws of the United States if conducted therein.
- 3. Restrictions.** Services Partner shall not, and shall not permit any third party to: (i) modify or create any derivative works based on the Hosted Service, or any portion thereof; (ii) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Hosted Service by any means, or disclose any of the foregoing; (iii) use the Hosted Service for possession, creation or transmission of any information, the possession, creation or transmission of which violates any state, local or federal law (including, without limitation, sending spam or otherwise duplicative or unsolicited messages in violation of applicable laws); (iv) transmit, send or store material that infringes upon, misappropriates or violates the intellectual property or privacy rights of any third party, or that is obscene, threatening, libelous, or unlawful or tortious, including, without limitation, material harmful to children; (v) attempt to probe, scan or test the vulnerability of the Hosted Service without proper authorization; (vi) reproduce the Hosted Service; (vii) license, sublicense, distribute, sell, resell, lend, rent, lease, transfer, assign, time-share, commercially exploit, or grant any rights in or to all or any portion of the Hosted Service (including, without limitation, any data, information or content contained therein, or any modifications thereof or derivative works based thereon), or provide access to, or make available, the same to any third party; (viii) remove, obscure or, in any manner, alter any proprietary notices or labels on, or contained in, the Hosted Service; (ix) use the Hosted Service, or its documentation other than as contemplated in this **Exhibit C**; (x) create Internet "links" to or from the Hosted Service, or "frame" or "mirror" any content forming part of the Hosted Service,

other than in Services Partner's own intranet portal or otherwise for its own internal business purposes; (xi) access the Hosted Service in order to (a) build a competitive product or service, (b) build a product or service using similar ideas, features, functions or graphics to the Hosted Service's, or (c) copy any ideas, features, functions or graphics of the Hosted Service; (xii) transmit, send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (xiv) interfere with or disrupt the integrity or performance of the Hosted Service or the data contained therein; (xv) attempt to gain unauthorized access to the Hosted Service (or data, information or content contained in, or made available by or through, the Hosted Service) or its related systems or networks (including, without limitation, attempting to log into an account that Services Partner is not authorized to access); or (xvi) violate the Agiloft Acceptable Use and Copyright Policy available at <https://www.agiloft.com/agiloft-partner-agreements.htm> (or such other hyperlink, as may be updated by Agiloft), and which is incorporated into this **Exhibit C** by reference.

- 4. Ownership.** Agiloft retains all right, title and interest, and all Intellectual Property Rights, in and to the Hosted Service and any modifications thereto and derivative works based thereon. Services Partner acknowledges that this **Exhibit C** is not a sale. ALL RIGHTS NOT EXPRESSLY GRANTED UNDER THIS **EXHIBIT C** ARE RESERVED TO AGILOFT.
- 5. Remedies.** If Services Partner violates this **Exhibit C**, Agiloft shall have the right to pursue any and all available remedies under any theory of law or equity to protect its interests and to prevent or mitigate any damage or loss of value that Agiloft may or does incur.
- 6. Term.** This **Exhibit C** will commence on the Effective Date of the Agreement and will remain in full force and effect for up to thirty days unless earlier terminated by either Party upon notice for any or no reason (the "**Evaluation Period**").
- 7. Effect of Termination.** Upon any expiration or termination of this **Exhibit C**:
  - 7.1.** The rights granted to Services Partner under this **Exhibit C** will immediately terminate;
  - 7.2.** Services Partner shall immediately discontinue any use of the Hosted Service and uninstall and securely delete or destroy all full or partial copies of any related software and documentation. If requested by Agiloft, Services Partner shall permit Agiloft to be present to validate such uninstall activities. Services Partner shall deliver to Agiloft a written statement confirming its compliance with this Section 7.2;
  - 7.3.** Each Party shall promptly return or securely delete or destroy all Confidential Information provided under this **Exhibit C**;
  - 7.4.** Services Partner will not have access to any data it provided to the Hosted Service or to any customizations made to the Hosted Service by or for Services Partner; and
  - 7.5.** Sections 3, 4, 5, 7, 8, and 9 will survive.

- 8. WARRANTY DISCLAIMER.** THE HOSTED SERVICE IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND. AGILOFT MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE HOSTED SERVICE INCLUDING BUT NOT LIMITED TO CONDITION, AVAILABILITY OR FUNCTIONALITY, AND AGILOFT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERVICES PARTNER, AND NOT AGILOFT, SHALL BE SOLELY RESPONSIBLE FOR SERVICES PARTNER’S USE OF THE HOSTED SERVICE, INCLUDING, WITHOUT LIMITATION, ANY USE OF THE RESULTS OF THE HOSTED SERVICE AND DECISIONS MADE OR ACTIONS TAKEN BASED ON THE HOSTED SERVICE.
- 9. LIMITATION OF LIABILITY.** IN NO EVENT SHALL AGILOFT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS **EXHIBIT C**, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS OR USE OR LOSS OF DATA, INCURRED BY SERVICES PARTNER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE, EVEN IF AGILOFT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS AND EXCLUSIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS AND EXCLUSIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THIS **EXHIBIT C**.