



ON-PREMISE SUBSCRIPTION LICENSE AGREEMENT

This agreement, between Agiloft, Inc., located at 460 Seaport Court, Suite 200, Redwood City, California, 94063, and the individual or non-individual legal entity agreeing to the terms herein, creates certain rights and responsibilities. If you execute this agreement on behalf of a non-individual legal entity such as a company, you claim the authority to bind such legal entity to the terms of this Agreement. **By executing this Agreement, whether by signature, by clicking a box online, or by any other legally recognized method, you represent and warrant you have read and understood it, you have the authority to bind your company or organization to its terms and conditions, and you agree to its terms.**

Table of Contents

1. [Definitions](#)
2. [Free License](#)
3. [Our Obligations](#)
4. [Restrictions on Use](#)
5. [Other Applications](#)
6. [Fees and Payment](#)
7. [Proprietary Rights and License Grants](#)
8. [Confidentiality](#)
9. [Warranties, Exclusive Remedies and Disclaimers](#)
10. [Mutual Indemnification](#)
11. [Mutual Limitation of Liability](#)
12. [Renewals and Termination](#)
13. [Governing Law and Jurisdiction](#)
14. [General Provisions](#)

1. DEFINITIONS

“Agreement” - this License agreement.

“Corrections” - any corrections, changes, or workarounds we may provide you for any defects, errors, or malfunctions in our Software Product or systems.

“Edition” - the specific package of the Agiloft product licensed, which determines the available user license types and features.

“Documentation” - our online user guides, documentation, and help and training materials, including courses, quizzes and videos.

“Free Software Product” - means a version of our Software Product with limited usage and functionality, for which you have made no payment to us.

“Force Majeure” - events beyond our control, such as an act of God or act of government, including but not limited to flood, fire, earthquake, civil unrest, act of terror, provider strike or other labor problem, internet service provider failure or delay, or denial of service attack.

“Malevolent Code” - code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“Other Applications” - any on or offline software application created or provided by you or any party other than Agiloft, that interoperates with our Software Product.

“Premium Support” - Standard Support plus round the clock telephone support for critical issues, priority queue and case routing, annual performance review, and a designated service representative.

“Quote” - the ordering documents specifying the pricing terms for the Software Product Edition and Standard or Premium Support Service and other services as applicable provided by us to you, including any addenda and supplements thereto.

“Software Product” - any computer programs, applications or scripts created by us and used or accessed by you, directly or indirectly, including all functionality described in the Documentation, or any part thereof.

“Standard Support” - the core support services provided to all Support and Upgrade Service customers, as more fully described in Exhibit A.

“Support and Upgrade Service” - the provision of support and upgrades to licensed users.

“User,” “user” - an individual authorized to use our Software Product or Support service.

“We,” “we,” “Us,” “us,” “Our,” or “our” - Agiloft, Inc.

“You,” “you,” “Your,” or “your” - the company or other legal entity represented by the person executing the Agreement, as well as affiliates of that company or entity.

“Your Data” - any electronic data or information supplied by or for you and not part of our Software Product, that is submitted, collected, processed or managed by or for you in conjunction with your use of the Software Product, or Standard or Premium Support.

“Your KnowledgeBase” - your data and the configuration of business rules, workflows and other database attributes created or modified for you.

[Back to Top](#)

2. FREE LICENSE

2.1 Special Terms. We make a limited version of our Software Product available free of charge (“Free Software Product”). If you choose to use the Free Software Product, all the terms and conditions in this Agreement apply to you, except the following alternative terms will apply:

- a) NOTWITHSTANDING THE TERMS AND CONDITIONS SET OUT IN §9 (WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS), THE FREE SOFTWARE PRODUCT IS PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.
- b) NOTWITHSTANDING THE TERMS AND CONDITIONS SET OUT IN §10 (MUTUAL INDEMNIFICATION) WE HAVE NO DUTY TO INDEMNIFY YOU FOR ANY REASON WHATSOEVER.

[Back to Top](#)

3. OUR OBLIGATIONS

3.1. Standard Support and Upgrades. We will provide our Standard Support to you at no additional charge during the on-premise annual subscription term. We are constantly improving our Software Product and want you to benefit from such improvements. To that end, we will:

- a) Provide you with corrections, changes, or workarounds (“Corrections”) for any significant defects, errors, or malfunctions in our Software Product or systems, on a timely basis, given the nature and scope of the defect.
- b) Make Software Product upgrades available for download and installation at our website and notify you about major upgrades that provide significant enhancements.
- c) Make release notes available and identify any significant impact upgrades may have on existing customizations.
- d) Make available to you any revisions to the system Documentation developed to reflect upgrades and improvements to the Software Product.
- e) Generate new licenses to cover upgraded releases or replacement licenses should you move your system onto a new server with a different IP address or hostname, if you provide written release of the original licenses.

3.2. Technical Support. We will provide our Standard Support to you at no additional charge during the

on-premise annual subscription term or our Premium Support at the rates set out in the applicable Quote. As part of the Standard Support, we will:

- a) Provide you with support for the most recent release of our Software Product. Following any new release, we will also provide you with support for the immediately prior version of our Software Product for four months.
- b) Our Standard Support covers support on standard functionality and Software Product defects. It does not include the provision of customization advice or consulting services. Neither does it cover problems caused by your system administrator, such as your accidental or inadvertent destruction of your own data, or a Force Majeure.
- c) Further details of our Standard and Premium support services are incorporated and attached as Exhibit A.

3.3. Consulting Services. We will provide Consulting Services as specified in an applicable Quote.

3.4 Protection of your Data. If you provide us with access to Your KnowledgeBase for purposes of consulting or provision of support, we will take organizational, physical, and technical precautions to protect the security of Your Data. Those precautions will include measures for preventing access, use, modification or disclosure of Your Data by our employees and contractors except (a) to provide consulting or support services, (b) as compelled by law in accordance with §8.4 (Compelled Disclosure) below, or (c) as you expressly permit in writing.

[Back to Top](#)

4. RESTRICTIONS ON USE

4.1 Usage Limits. Our Software Product is subject to usage limits, including those based on the Edition and limits on the number and type of licenses purchased. The applicable Quote will specify the Edition and the permitted number of licenses of each type and their appropriate usage, and you agree to stay within the license restrictions. If you exceed a contractual usage limit, we may work with you to seek to reduce your usage so that it conforms to that limit. If, notwithstanding our efforts, you are unable or unwilling to abide by a contractual usage limit, you agree to pay for the additional necessary licenses for the Software Product promptly upon our providing you with a new Quote, and/or pay any invoice for excess usage in accordance with Section 6.2 (Invoicing and Payment).

4.2 Usage Control. You will be responsible for user compliance with this Agreement, as well as the accuracy, quality and legality of Your KnowledgeBase, including the means by which you acquire Your Data. You agree to use our Software Product only in accordance with the Quote, the Documentation and applicable laws and government regulations. It is your responsibility to comply with any terms of service for Other Applications that you use in conjunction with our Software Product.

4.3 Usage Restrictions. You will not (a) make any part of our Software Product available to, or use any Software Product for the benefit of, anyone other than you or users, or (b) sell, resell, license, sublicense, distribute, rent or lease the Software Product.

You will not circumvent a contractual usage limit, or copy the Software Product or any part thereof,

including a feature, function, or user interface, except as permitted in writing by us. You will not frame or mirror any part of any our Software Product, other than framing on your own intranets or otherwise for your own internal business purposes or as permitted in the Documentation. You may not access any part of our Software Product in order to build a competitive product or service, or reverse engineer any part of our Software Product (to the extent such restriction is permitted by law).

4.4 Test Licenses. You may wish to purchase test licenses for use in development and testing. Any additional fees associated with such licenses will be set forth in the Quote.

4.5 External-Facing Service Behavior. You and your users are solely responsible for complying with applicable law in any use of cookies or other tracking technologies, as well as the U.S. Digital Millennium Copyright Act.

4.6. Removal of Software Product and Other Applications. If a third party contends that any content in our Software Product violates applicable law or third-party rights, and if we are directed to remove such content in our Software Product, we will remove such content as soon as practicable in an upgrade to our Software Product. If we receive information that integration with any Other Application in Your KnowledgeBase may violate the terms set out in this §4 or applicable law or third-party rights, you will promptly disable or modify such integration with the Other Application to resolve the potential violation. If we so notify you, and you choose not to install the upgrade or do not remove such content, you are solely responsible to the third party for any violations of their legal rights for continued use of such content.

4.7 Export Compliance. Our Software Product, other technology we make available to you, and any derivatives thereof, may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit users to access or use any Software Product in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria, or Crimea) or in violation of any U.S. export law or regulation.

4.8 Anti-Corruption. You agree that You have not received, been offered, solicited, or accepted any illegal (in accordance with applicable State and Federal law) or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement.

4.9 Anti-Terrorism. Neither Party is in violation of any U.S. Anti-Terrorism (including applicable Executive Orders) or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

[Back to Top](#)

5. OTHER APPLICATIONS

5.1 Acquisition of Other Applications. Any rights or obligations associated with the acquisition by you of other applications, products or services, and any exchange of data between you and any third party provider, are held between you and that provider. We do not warrant or support Other Applications.

5.2 Other Applications and Your KnowledgeBase. If you install or enable any Other Application for use

with our Software Product, you may be required to grant permission to the provider of that Other Application to access Your KnowledgeBase as required for the interoperation of that Other Application with the Software Product. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by any Other Application.

5.3 Integration with Other Applications. The Software Product may contain features designed to interoperate with Other Applications. To use such features, you may be required to obtain access to Other Applications from their providers, and may be required to grant us access to your account(s) for the Other Applications. If the provider of the Other Application ceases to make the Other Application available for interoperation with the corresponding Software Product on reasonable terms, or changes the API in a manner which breaks the integration with the Software Product, you will not be entitled to any refund, credit, or other compensation.

[Back to Top](#)

6. FEES AND PAYMENT

6.1 Fees. You agree to pay all fees as set out in the applicable Quote. Except as otherwise stated herein, you agree that fee payment obligations are non-cancelable and fees paid are non-refundable. You understand that licenses and services purchased can be increased at any time but cannot be decreased until the end of the applicable term.

6.2 Invoicing and Payment. You will provide us with a valid purchase order or alternative payment authorization documents acceptable to us. We accept ACH, wire transfers, checks, credit card, and P-Card payments. If you opt for credit card or P-Card payment, you authorize us to charge such card for our Software Product as set out in the Quote for the initial term and any authorized renewal term(s) as described in §12.2 (Renewals) and §12.4 (Termination). All credit card and P-Card payments will be subject to a three percent (3%) service fee. We will invoice you in accordance with the relevant Quote.

6.3 Payment Due Dates. Unless otherwise stated in the Quote, invoiced charges are due 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information.

6.4 Overdue Invoices. If any invoiced amount is not received by us by the due date, then without limiting our rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

6.5 Suspension of Service and Acceleration. If any amount owed by you is 30 (thirty) or more days overdue, we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations so that all such obligations become immediately due and payable, and suspend our Service to you until such amounts are paid in full. We will give you at least 10 days' prior notice that your account is overdue, in accordance with §13.1 (Manner of Giving Notice), before suspending Service to you.

6.6 Payment Disputes. We will not exercise our rights under §6.4 (Overdue Charges) or §6.5 (Suspension of Service and Acceleration) above if you are disputing the relevant charges reasonably

and in good faith and are cooperating diligently to resolve the dispute.

6.7 Taxes. You are responsible for paying any required taxes not invoiced by us for any purchase under this agreement.

6.8 Prospective Functionality. You acknowledge that your purchase of our Software Product is not contingent on the delivery of any prospective functionality or features, or dependent on any oral or written comments made by us regarding future functionality or features.

[Back to Top](#)

7. PROPRIETARY RIGHTS AND LICENSE GRANTS

7.1 Reservation of Rights. Our Software Product is protected by domestic and international intellectual property laws and treaties, including copyright laws. Our Software Product is licensed, not sold. Whether you have paid for your licenses or not, you may only access and use our Software Product in accordance with this Agreement. Subject to the limited rights expressly granted hereunder, we reserve all of our right, title and interest in and to our Software Product, including all of our related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

7.2 License by us to use our Software Product. We grant to you a specific number of limited, non-exclusive, non-sublicensable, non-transferable licenses, to use our Software Product pursuant to the applicable Quote, subject to that Quote and this Agreement.

7.3 License by you to use your Feedback. Subject to the restrictions on Confidential Data, you grant to us a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into our Software Product any suggestion, enhancement request, recommendation, or other feedback provided by you or your Users relating to the operation of our Software Product.

7.4 Federal Government End Use Provisions. We provide the Software Product, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to our Software Product include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

7.6 Third Party Software. Our Software Product may contain software, which originated with third parties and without limiting the general applicability of the other provisions of this Agreement, you agree: (a) the right, title and interest to any third-party software incorporated in the Software Product remains with the third-party, which supplied the same; and (b) you will not distribute, disseminate, or otherwise provide any such third-party software available with the Software Product, in any manner,

outside the scope set forth in this Agreement.

[Back to Top](#)

8. CONFIDENTIALITY

8.1 Definition. "Confidential Information" is all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, either expressly designated as confidential or that should reasonably be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information may include, but is not limited to, business information or ideas, trade secrets, proprietary data, personnel data, suppliers, procedures, cost of merchandise, sales data, price lists, financial information, business plans, prospect names, business opportunities, confidential business reports, customer lists, data or contracts, computer software usage, technical reports on products and services, product data or specifications, technical know-how, formulae, diagrams, flow charts, drawings, source code, object code, program listings, test results, processes, inventions, research projects or product development.

8.2 Exceptions. Confidential Information will remain the exclusive property of the Disclosing Party, unless and until the Receiving Party can prove that it (a) became publicly known through no fault of the Receiving Party, (b) was properly and lawfully known to Receiving Party, without restriction, prior to disclosure by the Disclosing Party, (c) became properly and lawfully available to Receiving Party through a third party, or (d) was independently developed by Receiving Party.

8.3 Standard of Protection. Receiving Party will hold in confidence and not disclose Confidential Information to anyone, except as necessary to carry out the terms of this Agreement, or as authorized by the Disclosing Party in writing, and agrees to limit access to Confidential Information of the Disclosing Party to employees and contractors of the Receiving Party who have signed confidentiality agreements containing protections no less stringent than those herein.

8.4 Compelled Disclosure. If Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, Receiving Party agrees to give Disclosing Party prompt notice of the compelled disclosure. Receiving Party further agrees to give reasonable assistance to Disclosing Party, to the extent legally permitted, and at Disclosing Party's cost, in any contest by Disclosing Party to the compelled disclosure.

[Back to Top](#)

9. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

9.1 Representations. Each party represents that it has entered into this Agreement in good faith and has the legal power to do so.

9.2 Money Back Satisfaction Guarantee. We offer a 90 (ninety) day, full money-back guarantee on our Software Product, Support and Upgrade Service and Agiloft implementation services. If you are not absolutely delighted, you may cancel for any reason within 90 (ninety) days of your initial purchase order. Unless specifically excluded in the Quote, this guarantee covers the software and all support and

consulting services directly related to the Agiloft implementation. If you request services that are not directly related to Agiloft, such as cleaning up your data for import, these may not be included in the guarantee; however, any such exceptions will be spelled out in the Quote. To cancel the order and receive a complete refund of any fees paid, please notify us per §13.1.

9.3 Limited Warranties. We warrant that we will not materially decrease the overall security of our Software Product during the applicable term; that the Software Product will perform materially in accordance with the applicable Documentation, that, subject to §5.3 (Integration with Other Applications), we will not materially decrease the functionality of the Software Product during the current term, and that the Software Product will not introduce Malevolent Code into your systems. For any breach of the warranties described in this subsection, your exclusive remedies are those described in §12.4 (Termination) and §12.5 (Refund or Payment upon Termination).

9.4 Mutual Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, OUR SOFTWARE PRODUCT, ANY THIRD PARTY SOFTWARE OR SUPPORT SERVICES ARE PROVIDED "AS IS" AND NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER OR NOT EXPRESS, IMPLIED, STATUTORY NOR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY SOFTWARE OR SOFTWARE PROVIDERS. WE MAKE NO REPRESENTATION AND WARRANTY WHATSOEVER WITH REPECT TO THIRD PARTY SOFTWARE INCORPORATED INTO THE SOFTWARE PRODUCT.

[Back to Top](#)

10. MUTUAL INDEMNIFICATION

10.1 Our Indemnification of You. Subject to the limitations set forth above in Paragraph 9, We will defend you against any claim, demand, suit or proceeding made or brought against you by a third party alleging that your use of our Software Product or Support and Upgrade Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights, and will indemnify you from any damages, attorney fees and costs finally awarded against you as a result of such a claim against you, or for amounts paid by you under a settlement approved by Us in writing of such a claim, provided you (a) promptly give us written notice of such a claim, (b) give us sole control of the defense and settlement of such a claim, except that we may not choose to settle any such claim unless it unconditionally releases you of all liability, and (c) give us all reasonable assistance, at our expense.

If we receive information about an infringement or misappropriation claim related to our Software Product we may choose, in our discretion and at no cost to you, to (a) modify our Software Product so that it no longer infringes or misappropriates, without breaching our warranties under §9.3 (Limited Warranties), (b) obtain a license to allow for your continued use of our Software Product in accordance with this Agreement, or (c) terminate this agreement and refund the aggregate license payments paid by you for the Software Product as depreciated over a three-year straight line basis. If you choose not

to upgrade to a non-infringing release under (a) or to continue using the Software Product after termination of the agreement under (c), you are solely responsible to the third party for any violations of their legal rights for continued use of such content. The above defense and indemnification obligations do not apply to the extent a claim against you arises from alleged infringement or misappropriation in Your KnowledgeBase, any Other Application or your breach of this Agreement.

10.2 Your Indemnification of Us. You will defend us against any claim, demand, suit or proceeding made or brought against us by a third party alleging that Your KnowledgeBase, or your use of our Software Product or Support and Upgrade Service in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law, and will indemnify us from any damages, attorney fees and costs finally awarded against us as a result of such a claim, or for any amounts paid by us under a settlement approved by You in writing, of such a claim against us, provided we (a) promptly give you written notice of such a claim against us, (b) give you sole control of the defense and settlement of such a claim against us, except that you may not settle any such claim against us unless it unconditionally releases us of all liability, and (c) give you all reasonable assistance in the defense of such a claim against us, at your expense.

10.3 Exclusive Remedy. This §10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this §10.

[Back to Top](#)

11. MUTUAL LIMITATION OF LIABILITY

11.1 Limitation of Liability. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10 (MUTUAL INDEMNIFICATION), IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU UNDER THIS AGREEMENT, INCLUDING ANY RENEWAL, PREDECESSOR OR SUCCESSOR AGREEMENTS, FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWENTY-FOUR (24) MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT).

11.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES, OR INDIRECT, SPECIAL, INCIDENTAL, COVER, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

[Back to Top](#)

12. RENEWALS AND TERMINATION

12.1 Term of Agreement. This Agreement commences on the date you first accept it and continues for one year, or as otherwise set forth in the Quote, unless terminated.

12.2 Renewal. We will send you an invoice for renewal at least 45 (forty-five) days in advance of the expiration date of this Agreement, at the then-prevailing price for the licenses and services then being provided to you, unless We provide our intent to not renew the Agreement, such notice to be at least one hundred and eighty (180) days prior to the expiration date. The Agreement will renew for another term of the same length upon your payment of the renewal invoice. If your payment is late, the Agreement will be renewed retroactively as of the date of expiration and all of its provisions shall be deemed to have been in effect continuously since that time. License renewals per license and service prices will be the same as that of the immediately prior term unless we notify you in writing of a price increase, which we will do at least 90 (ninety) days before expiration. Such price increases will not exceed 5% (five percent) per year since the last price increase or start of service, whichever is later, unless the previous pricing was designated as special or one-time pricing.

12.3 Increases and Decreases. You may purchase additional licenses or services at any time, and the additional costs associated with these purchases will be based on current pricing, pro-rated to the end of your current contract term. Decreases in service or the number of licenses must be made at the end of your current term, and any renewal for a decrease in licenses will be based on current pricing without regard to prior per-license pricing.

12.4 Termination. A party may terminate this Agreement for cause (a) upon 30 (thirty) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (b) if the other party becomes the subject of a bankruptcy petition or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, or (c) terminated by Customer as a result of purchasing On-Premise licenses, or (d) by Customer as a result of selecting the ninety (90) day satisfaction guarantee, as described in §9.2.

12.5 Refund or Payment upon Termination. If this Agreement is terminated by you in accordance with §12.4 (Termination), we will refund you any prepaid fees covering the remainder of the term after the effective date of termination. If this Agreement is terminated by us in accordance with §12.4, you will pay any unpaid fees for service up through the termination date. Unless you are entitled to a complete refund under the Money Back Satisfaction Guarantee as described in §9.2, termination will not relieve you of your obligation to pay any fees due us for the period prior to the effective date of termination.

12.6 Surviving Provisions. The sections titled "Fees and Payment" "Proprietary Rights and Licenses," "Confidentiality," "Warranties, Exclusive Remedies and Disclaimers," "Mutual Indemnification," "Mutual Limitation of Liability," "Renewals and Termination," "Governing Law and Exclusive Jurisdiction," and "General Provisions" will survive any termination or expiration of this Agreement.

[Back to Top](#)

13. GOVERNING LAW AND EXCLUSIVE JURISDICTION

13.1 Manner of Giving Notice. All notices, permissions and approvals given under this Agreement shall be in writing and shall be deemed to have been provided upon: (a) personal delivery, (b) the second business day after first class mailing, or (c) one day after receipt of an email sent to the email address of notice, or (d) one week after international express mailing. All notices to us shall be addressed to Accounts Payable, Agiloft, Inc., 460 Seaport Court, Suite 200, Redwood City, CA 94063 or accounting@agiloft.com. Billing-related notices to you shall be addressed to the relevant billing contact or email address designated by you. All other notices to you shall be addressed to the Support and Upgrade Service system administrator designated by you.

13.2 Consent to Governing Law and Exclusive Jurisdiction. Each party agrees to the applicable governing law of the following jurisdictions, without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of their courts as follows:

- a) The Parties to this Agreement agree to participate, in good faith, in informal and confidential dispute resolution prior to bringing any claim against the other in a court of competent jurisdiction.
- b) If you are located in the United States, or anywhere not specifically identified in this subsection 13.2, this Agreement shall be governed by the laws of the State of California, and adjudicated in the state courts located in San Mateo County, California, or if required by law, the federal courts of the Northern District of California.
- c) If you are located in Europe, including Greenland, in the Middle East or in Africa, this Agreement will be governed by the laws of England, and adjudicated in the courts located in England. The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contract (Rights of Third Parties) Act (UK) 1999 by any person not a party to this Agreement.
- d) If you are located in Asia (including Pakistan, Sri Lanka, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkmenistan and Uzbekistan) or in the Pacific Rim, this Agreement will be governed by the laws of the Republic of Singapore and adjudicated in the courts of the Republic of Singapore. The parties to this Agreement do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act (Cap. 53B) (Singapore) by any person not a party to this Agreement.

[Back to Top](#)

14. GENERAL PROVISIONS

14.1 Entire Agreement. This Agreement is the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

14.2 Order of Precedence. In the event of any conflict or inconsistency among the following

documents, the order of precedence shall be: (1) this Agreement, (2) the applicable Quote and (3) the Documentation.

14.3 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent, not to be unreasonably withheld.

14.4 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.4 Prevailing Party. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees.

14.5 Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

14.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

[Back to Top](#)

Exhibit A – Additional Terms of Standard and Premium Support

1. SUPPORT ACCESS

- a) We shall maintain a technical support telephone number in Redwood City, California, US, which will be staffed by knowledgeable employees capable of providing technical assistance regarding the Software Product, its functionality, operations, and supporting documentation. Such telephone assistance will be available to you Monday-Friday, 7:30 am to 8:00 pm EST except holidays.
- b) We will also offer 24 hour / 7 day Web-based customer support. You will be provided with customer logins to our support knowledgebase and may submit inquiries and search for answers to FAQs at http://www.agiloft.com/support_login.htm. You will be notified via email or telephone as support tickets move through the process to resolution.
- c) Telephone calls may be logged in our Web-based customer support system, depending upon the content of the call and whether or not an immediate resolution is provided.
- d) Your personnel may be permitted to view all support tickets from all of your employees or just to view tickets submitted by them individually. Your customers are not provided with support logins, nor should they seek direct support from us.

2. PROBLEM CLASSIFICATION

Support tickets are placed into three general categories as follows:

- Support Issue - a question about standard Agiloft functionality that does not involve changes to the core Software Product, although it may involve changes to the configuration made by the administrator using their browser
- Enhancement Request - request to add functionality to the core Software Product
- Bug - a defect in the core Software Product

Support Issues can generally be resolved by your administrator within a few hours of submission based on advice provided by support staff. Enhancement requests may be scheduled at our discretion, based on the perceived usefulness of the request for other customers. Note that enhancement requests may also be performed as paid custom development at your request, should we choose not to incorporate them as a general enhancement.

We shall respond to and use reasonable commercial efforts to resolve issues deemed to be Bugs in accordance with the priority levels indicated below, which priority levels shall be determined in good

faith by Customer. Because it is usually possible to accomplish the same task in more than one way in Agiloft, we are often able to provide reasonable workarounds to any functional bugs.

3. PRIORITY RESPONSE TIMES FOR PROBLEMS

The following Investigation Response Times and Target Resolution times are for handling issues that have been classified as Bugs. Unless the customer has purchased Premium Support with 24/7 Phone Access as detailed at <http://www.Agiloft.com/support-plans.htm>, the hours during which Provider is obligated to work on problem resolution are restricted to standard business hours, which are from 7:30 am to 8:00 pm EST, Monday through Friday, except on federal holidays.

If a priority 1 issue is submitted during standard business hours, we will continue working on it outside of those hours until resolved, provided the resolution is within our control (i.e. we are given necessary access to an in-house server and customer personnel are available as needed). We will use our best commercially reasonable efforts to meet the response times and resolution targets set forth in this Section.

Priority	Description	Investigation Response Time	Target Resolution/ Workaround Time
1 - System Down	The production system is rendered inoperable due to a system software failure	30 minutes	30-60 minutes – we will assign as many engineers and/or support staff as needed 24/7 until the problem is resolved.
2 - Critical	A major program function is affected by a software failure, so that customers are adversely affected	60 minutes	1-2 hours – we will assign as many engineers and/or support staff as needed along with the best workaround available.
3 - High	A minor program function is affected by a software error, resulting in diminished productivity, or a problem occurs infrequently, or a workaround has been provided.	4 hours	If a workaround can be provided, the correction will be scheduled for the next regular upgrade. If not, a correction will typically be provided within a week.
4 - Medium	A desired new functionality is not working as expected, or a problem occurs that is not readily reproducible, or a workaround has been provided.	8 hours	If a workaround can be provided, any correction will be scheduled for the next regular upgrade. If not, a correction will typically be provided within a month.
5 - Low	An issue with negligible impact or a documentation or how-to	24 hours	If a workaround or answer can be provided, the correction may

Priority	Description	Investigation Response Time	Target Resolution/ Workaround Time
	question		be made at discretion of Provider, based on its relevance to other customers.

For timely resolution, particularly of Level 1 or 2 issues, you are requested to provide admin login access and root access to your system. The refusal to provide such access will negate our obligation to meet the expected resolution times, since in our experience, most problems are caused by a specific configuration on a specific server, and may not be reproducible elsewhere.

4. EXCLUSIONS

Standard Support is intended to cover standard functionality and software defects. It does not include the provision of customization advice and consulting services. If the issue is specific to the particular configuration of the customer knowledgebase or requires that we access and review the customer knowledgebase in order to provide a solution, it is classified as Consulting and is not covered under the support contract. (In much the same way, Microsoft support covers generic Word functionality, but does not include advice on plot changes to a novel written using Word). Consulting may be purchased separately at the current price quoted at our website at <https://www.Agiloft.com/consulting.htm>.

Problems caused by or arising from the following will not be considered "problems" for the purposes hereof and will not be subject to our obligation to provide Support Services:

- a) failure of server hardware or equipment not owned or directly controlled by Agiloft;
- b) failure of telecommunications or internet hardware or equipment not owned or directly controlled by Agiloft;
- c) failure resulting from errors made by the customer's system administrator;
- d) irreversible destruction of data caused by direct actions taken by customer;
- e) Force Majeure.

5. PREMIUM SUPPORT

Premium support includes all Standard Support services as well as:

- Round the clock telephone support for critical issues
- Priority on resolving support tickets

- Annual performance and usage review and analysis
- The appointment of a designated customer service representative

6. COVERAGE AND ADDITIONAL USERS

This Agreement, to remain valid, must include all licensed users purchased. As new licenses are purchased, the support fee for the new users must be pro-rated to the end of the current contract period, and such fees must be paid within the standard payment terms as set out in the Quote for this Agreement to remain in effect.