

## TERMS OF USE

### Version: January 2022

These AGILOFT Terms of Use ("**TOU**") govern Customer's use of the Services, and are deemed incorporated by reference into the agreement between Customer and Reseller pursuant to which Reseller is reselling the Services to Customer.

#### 1. DEFINITIONS

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Content**" means information obtained by AGILOFT from publicly available sources or third-party content providers and made available to Customer through the Services or pursuant to an Order Form, as more fully described in the Documentation.

"**Customer**" means the entity that has contracted with Reseller to purchase subscriptions to use the Services, subject to the conditions of these TOU. Where Reseller is using the Services for its own purposes, Reseller shall be considered Customer.

"**Customer Data**" means any electronic data or information submitted by or for Customer to the Services, excluding Content and Non- AGILOFT Applications.

"**Documentation**" means the applicable Service's documentation, its user guides, and policies, and help and training materials as updated from time to time, accessible via [agiloft.com](http://agiloft.com) or login to the applicable Service.

"**Edition**" - the specific package of the Agiloft product licensed, which determines the available license types and features.

"**Malicious Code**" means code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"**Non-AGILOFT Application**" means any Web-based, mobile, offline, or other software application functionality that interoperates with a Service, that is provided by Reseller, Customer, or a third party and/or listed on a Marketplace.

"**Order Form**" means the ordering document specifying the Services to be provided under the agreement between Customer and Reseller (which incorporates these TOU by reference), including any addenda, supplements, or additional product specific terms for the Services as required by AGILOFT.

**“Reseller”** means the entity that has contracted directly with AGILOFT to resell Services to its Customers and the entity that has contracted directly with Customer for the sale of a subscription to Services.

**“AGILOFT”** means Agiloft, inc., a Delaware corporation with its principal place of business at 460 Seaport Drive, Suite 200, Redwood City, CA 94063, USA.

**“Services”** means the products and services that are ordered by Customer under an Order Form and made available online by AGILOFT including associated offline or mobile components, as described in the Documentation. “Services” exclude Content and Non-AGILOFT Applications.

**“User”** means an individual who is authorized by Customer to use a Service for the benefit of Customer, for whom Customer has purchased a subscription, and to whom Customer (or, when applicable, AGILOFT at Reseller’s request), has supplied a user identification and password. Users may include, for example, Customer’s employees, consultants, contractors, and agents, and third parties with which Customer transacts business.

## **2. USE OF SERVICES AND CONTENT**

**2.1. Subscriptions.** Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by AGILOFT regarding future functionality or features.

**2.2. Usage Limits.** Services and Content are subject to usage limits specified in Order Forms or the Documentation.

**2.3. Customer Responsibilities.** Customer will (a) be responsible for Users’ compliance with the TOU, Order Forms and the Documentation, (b) be responsible for the accuracy, quality, and legality of Customer Data, the means by which Customer acquired Customer Data, Customer’s use of Customer Data with the Services, and the interoperation of any Non-AGILOFT Applications with which Customer uses Services or Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify AGILOFT or Reseller promptly of any such unauthorized access or use, and (d) use the Services only in accordance with these TOU, the Documentation, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-AGILOFT Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Users that in AGILOFT’s judgment threatens the security, integrity, or availability of AGILOFT’s services, may result in AGILOFT’s immediate suspension of the Services, however AGILOFT will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

**2.4. Usage Restrictions.** Customer will not (a) make the Services or Content available to anyone other than Customer or Users, or use Services or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell,

license, sublicense, distribute, make available, rent or lease the Services or Content, or include Services or Content in a service bureau or outsourcing offering, (c) use the Services or Non-AGILOFT Application 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, (d) use the Services or Non-AGILOFT Applications to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (f) attempt to gain unauthorized access to the Services or Content or their related systems or networks, (g) permit direct or indirect access to or use of Services or Content in a way that circumvents a contractual usage limit, or use the Services to access or use any of AGILOFT's intellectual property except as permitted under these TOU, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, and (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile Services or Content, or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

**2.5. Removal of Content and Non-AGILOFT Applications.** If Customer receives notice that Content or a Non-AGILOFT Application must be removed, modified and/or disabled to avoid violating applicable law, or third-party rights, Customer will promptly do so. If Customer does not take required action in accordance with the above or if in AGILOFT's judgment continued violation is likely to reoccur, AGILOFT may disable the applicable Content, Service and/or Non-AGILOFT Application until the potential violation is resolved. If requested by AGILOFT, Customer shall confirm such deletion and discontinuance of use in writing and AGILOFT shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable. In addition, if AGILOFT is required by any third-party rights holder to remove Content or receives information that Content provided to Customer may violate applicable law or third-party rights, AGILOFT may discontinue Customer's access to Content through the Services.

### 3. NON-AGILOFT PRODUCTS AND SERVICES

**3.1. Non-AGILOFT Products and Services.** AGILOFT or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-AGILOFT Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-AGILOFT provider, product or service is solely between Customer and the applicable Non-AGILOFT provider. AGILOFT does not warrant or support Non-AGILOFT Applications or other Non-AGILOFT products or services, whether or not designated by AGILOFT as "certified" or otherwise, unless expressly provided otherwise in an Order Form. AGILOFT is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-AGILOFT Application or its provider.

**3.2. Integration with Non-AGILOFT Applications.** The Services may contain features designed to interoperate with Non-AGILOFT Applications. AGILOFT cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-AGILOFT Application ceases to make the Non-AGILOFT Application available for interoperation with the corresponding Service features in a manner acceptable to AGILOFT.

## **4. PROPRIETARY RIGHTS AND LICENSES**

**4.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, AGILOFT, its Affiliates, its licensors and Content providers reserve all rights, title, and interest in and to the Services and Content, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**4.2. Access to and use of Content.** Customer has the right to access and use applicable Content subject to the terms of applicable Order Forms, these TOU and the Documentation.

**4.3. License by Customer to AGILOFT.** Customer grants AGILOFT, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit and display any Non-AGILOFT Applications and program code created by or for Customer using the Services or for use by Customer with the Services, and Customer Data, each as necessary for AGILOFT to provide and ensure proper operation of, the Services and associated systems in accordance with these TOU and the Documentation. If Customer chooses to use a Non-AGILOFT Application with a Service, Customer grants AGILOFT permission to allow the Non-AGILOFT Application and its provider to access Customer Data as required for the interoperation of that Non-AGILOFT Application with the Service. AGILOFT may evaluate Customer's use of the Services which may include reviewing Customer Data and User Details. AGILOFT may, for internal purposes only, use Customer Data to improve the Services. AGILOFT may also use Customer Data and User Details in an aggregated and anonymized form to derive statistical and performance information related to the Services. AGILOFT may use and disclose the aggregated and anonymized Customer Data or User Details for the foregoing purposes, provided that they do not include any data that would reveal the identification of Customer, Customer Data, or any other Customer Confidential Information. AGILOFT will take organizational, physical, and technical precautions to protect the security of Customer Data. Those precautions will include measures for preventing access, use, modification, or disclosure of Customer Data by AGILOFT's employees and subcontractors except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law, or (c) as you expressly permit in writing. Subject to the limited licenses granted herein, AGILOFT acquires no right, title or interest from Customer or its licensors under these TOU in or to any Customer Data, Non-AGILOFT Application or such program code.

**4.4. License to Use Feedback.** Customer grants to AGILOFT and its Affiliates a worldwide, perpetual, irrevocable, royalty-free, license to use and incorporate into its services any suggestions, enhancement, requests, recommendations, correction, or other feedback provided by Customer or its Users, relating to the operation of AGILOFT's or its Affiliates' services.

**4.5. Federal Government End Use Provisions.** AGILOFT provides the Services, including related software and technology, for ultimate federal government end use in accordance with the following: The Services consist of “commercial items,” as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services shall be as provided in this TOU, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this TOU specifically granting those rights.

## 5. TERM AND TERMINATION

**5.1. Term.** This TOU commences on the date you accept or execute an Order Form and continues for the term set forth on the Order Form, unless terminated as set forth in this TOU.

**5.2. Termination of the Services.** Customer’s use of the Services may be immediately terminated and/or suspended, at AGILOFT’s option, upon notice due to: (a) a breach of the terms of these TOU, the Documentation or Order Forms by Customer or any User; or (b) a breach by Reseller of its payment obligations to AGILOFT with respect to the subscriptions it is reselling to Customer in connection with these TOU.

**5.3. Termination of Reseller’s Agreement with AGILOFT.** Following any termination or expiration of Reseller’s agreement with AGILOFT authorizing Reseller to resell the Services, each Customer subscription to the Services outstanding at the time of such termination or expiration (“**Legacy Order**”) shall remain in effect until the end of its subscription term, and shall continue to be governed by these TOU, provided that Customer is not in breach of these TOU and AGILOFT has received all payments due in connection with such Legacy Orders. Except as provided herein, following a termination or expiration of Reseller’s agreement with AGILOFT, AGILOFT is under no obligation to provide the Services directly to Customer, or to assume a direct contractual relationship with Customer.

**5.4. No Refunds upon Termination.** In no case will any termination, expiration, or suspension of the Services, these TOU, or Reseller’s agreement with AGILOFT give rise to any liability of AGILOFT to Customer for refunds or damages.

**5.5. Data Portability and Deletion.** User’s Data may be exported at any time while this TOU is in effect, using the standard administrative interface. Upon written request by Customer made within 30 (thirty) days after the effective date of termination or expiration of this TOU, AGILOFT will make Customer Data available to Customer for export or download as provided in the Documentation. After that 30-day period, AGILOFT will have no obligation to maintain or provide User Data, and will delete or destroy all copies of User Data in its systems or otherwise in its possession or control as provided in the Documentation, unless prohibited by applicable law from doing so.

## 6. WARRANTY DISCLAIMER

AS BETWEEN AGILOFT AND CUSTOMER, AGILOFT MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND 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. CONTENT IS PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

**6.1 Limited Warranties.** Notwithstanding anything to the contrary in this TOU, AGILOFT warrants that it will not materially decrease the overall security of the Services during the applicable Order Form term; that the Services will perform materially in accordance with the applicable Documentation, that, AGILOFT will not materially decrease the functionality of the Services during the current term, and that the Services will not introduce Malevolent Code into Customer's systems.

## 7. INDEMNIFICATION

Customer will defend AGILOFT against any claim, demand, suit or proceeding made or brought against AGILOFT by a third party alleging that any Customer Data infringes or misappropriates such third party's intellectual property rights, or arising from Customer's use of the Services or Content in breach of these TOU, the Documentation, an Order Form, or applicable law (each a "**Claim Against AGILOFT**"), and will indemnify AGILOFT for any damages, attorney fees and costs finally awarded against AGILOFT as a result of, or for any amounts paid by AGILOFT under a settlement approved by AGILOFT in writing of, a Claim Against AGILOFT; provided that AGILOFT: (i) promptly gives Customer written notice of the Claim Against AGILOFT, (ii) gives Customer sole control of the defense and settlement of the Claim Against AGILOFT (provided that Customer may not settle or defend any Claim Against AGILOFT unless it unconditionally releases AGILOFT of all liability), and (iii) provides to Customer all reasonable assistance, at Customer's expense.

## 8. NO LIABILITY

IN NO EVENT SHALL AGILOFT HAVE ANY LIABILITY TO CUSTOMER OR ANY USER FOR ANY DAMAGES RELATED TO CUSTOMER'S PURCHASE OR USE OF THE SERVICES PURSUANT TO THESE TERMS OF USE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 9. PRIVACY POLICY

By using the Services, you consent to transfer, processing, and storage of your Data. Please read the AGILOFT Hosting Privacy Statement at <https://www.agiloft.com/privacy-hosted.htm> carefully for information regarding AGILOFT's collection, use, storage, and disclosure of your personal information. The AGILOFT Hosting Privacy Statement is incorporated by reference into these TOU.

## 10. GENERAL

**10.1. Notice.** Any notices that AGILOFT is required to provide to customers under the Documentation shall be provided by AGILOFT to the Reseller or Customer as determined by AGILOFT in its sole discretion based on the circumstances and designated contact information for notices available to AGILOFT in the Services.

**10.2. Amendments.** AGILOFT reserves the right, at its discretion, to change the terms and conditions of these TOU on a going-forward basis at any time. Please check these TOU periodically for changes. You accept those changes by your continued use of the AGILOFT Technology. Disputes arising under these TOU will be resolved in accordance with the version of the TOU that was in effect at the time the dispute arose.

**10.3. Governing Law & Arbitration.** Customer 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:

- i. Customer agrees 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.
- ii. If Customer is located in the United States, or anywhere not specifically identified in this subsection 10.3, these TOU 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.
- iii. If Customer is located in Europe, including Greenland, in the Middle East or in Africa, these TOU will be governed by the laws of England, and adjudicated in the courts located in England. The parties to these TOU 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 these TOU.
- iv. If Customer is located in Asia (including Pakistan, Sri Lanka, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, Turkmenistan and Uzbekistan) or in the Pacific Rim, these TOU will be governed by the laws of the Republic of Singapore and adjudicated in the courts of the Republic of Singapore. The parties to these TOU 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 these TOU.

**10.4. Waiver of Jury Trial.** EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT.

**10.5. Force Majeure.** AGILOFT will not be responsible or liable to you, or deemed in default or breach under these TOU by reason of any failure or delay in the performance of its obligations under these TOU where such failure or delay is due to events beyond AGILOFT's control, such as an act of God, act

of government, 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.

**10.6. Equitable Relief.** You recognize and agree that if you breach any obligation under these TOU, 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 these TOU and to enforce these TOU, and you hereby waive any and all defenses and objections you may have on the grounds of jurisdiction and venue, including, but not limited to, lack of personal jurisdiction and improper venue, and waive any requirement for the securing or posting of any bond in connection with such remedy.

**10.7. Cumulative Remedies.** The exercise of AGILOFT of any remedy under these TOU, including but not limited to termination, will be without prejudice to any other remedies it may have under these TOU, or by law, equity or otherwise.

**10.8. Relationship of the Parties.** The parties are independent contractors. These TOU does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

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

**10.10. Waiver.** No failure or delay by AGILOFT in exercising any right under these TOU will constitute a waiver of that right.

**10.11. Severability.** If any provision of these TOU 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 these TOU will remain in effect.

**10.12. Further Contact.** AGILOFT may contact Customer regarding new AGILOFT service features and offerings.

**10.13. Third Party Beneficiary.** These TOU are between Customer and Reseller; AGILOFT is not a party to these TOU, however AGILOFT is a third-party beneficiary to the agreement between Customer and Reseller solely as it relates to these TOU.

**10.14. Order of Precedence.** With respect to the subject matter discussed herein, in the event of any conflict or inconsistency between these TOU and any other terms or conditions in Customer's agreement or order form with Reseller, these TOU shall prevail.

**10.15. Titles and Headings.** Titles and headings of sections of this TOU are for convenience only and shall not affect the construction of any provision of this TOU.