



HOSTED SERVICE 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 that you have read and understood it and that you agree to its terms.**

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1. DEFINITIONS

"Agreement" - this Hosted Service agreement.

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

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

“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.

“Hosted Service” - the hosting infrastructure, access and services related to the online delivery of the Software Product, or any part thereof.

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

“On-Premise Service” – the provision of licenses, support, and upgrades for the Software Product installed on your servers.

“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 or Hosted Service.

“Quote” - the ordering document specifying the pricing terms for the Software Product, Hosted Service, and Standard or Premium Support Service to be 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 support services provided to all Hosted Service customers.

“User” - an individual authorized to use our Hosted Service, 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 or Hosted Service, that is submitted, collected, processed or managed by or for you in conjunction with your use of the Hosted Service, 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.

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2. ON-PREMISE SERVICE

2.1 Special Terms. You may choose to install the Software Product on your own server(s) rather than on ours as part of our On-Premise Service. If you choose to use On-Premise Service, all the terms and conditions in this Agreement, including those specifically referring to Hosted Service, apply to you, with the exception of §§3.1 and 3.2(b).

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3. OUR OBLIGATIONS

3.1. Hosted Service. We will make the Hosted Service available to you pursuant to this Agreement, at the rates set out in the applicable Quote.

As part of the Hosted Service, we will take all reasonable measures to keep uptime at or above 99.9% (ninety-nine and nine tenths percent). If, due to our error, our hosted servers are down more than .1% (one tenth of one percent) in a given month, you will be entitled to receive a 50% (fifty percent) credit for that month. If, due to our error, our hosted servers are down more than .5% (one half of one percent) in a given month, you will be entitled to receive a 100% (one hundred percent) credit for that month.

In no event will you be entitled to a refund for downtime caused by regular maintenance (normally conducted during the hours of 9 p.m. – 4 a.m., Pacific Time), or a Force Majeure.

3.2. Software Product and Upgrades. We will grant you licenses to use our Software Product pursuant to this Agreement, at the rates set out in the applicable Quote. 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) Install upgrades of our Software Product to the hosted servers as soon as practical after they become available. We will promptly notify you of any upgrades that will significantly affect your program functionality.
- 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.

3.3. Technical Support. We will provide our Standard Support to you at no additional charge 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.

3.4 Protection of your Data. We will take organizational, physical, and technical precautions to protect the security of your Data, as described in the Documentation. Those precautions will include measures for preventing access, use, modification or disclosure of your Data by our employees and contractors except (a) to provide the Hosted Service and prevent or address service or technical problems, (b) as compelled by law in accordance with §8.4 (Compelled Disclosure) below, or (c) as you expressly permit in writing.

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4. RESTRICTIONS ON USE

4.1 Usage Limits. Our Hosted Service and Software Product are subject to usage limits, based on the number and type of licenses purchased. The applicable Quote will specify 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 or services promptly upon our request, and to pay any invoice for excess usage in accordance with §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 commercially reasonable efforts to prevent unauthorized access to or use of our Hosted Service or Software Product, and to notify us promptly of any such unauthorized access or use. You agree to use our Hosted Service and 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 which you use in conjunction with our Hosted Service or Software Product.

4.3 Usage Restrictions. You will not (a) make any Hosted Service or Software Product available to, or use any Hosted Service or Software Product for the benefit of, anyone other than you or users, or (b) sell, resell, license, sublicense, distribute, rent or lease the Hosted Service or Software Product. You will not use your Knowledgebase or the Hosted Service to store or transmit infringing, libelous, or otherwise unlawful or tortious

material, or material in violation of third-party privacy rights, to store or transmit Malevolent Code, to interfere with or disrupt the integrity or performance of any Hosted Service or data not belonging to you, or attempt to gain unauthorized access to any Hosted Service or Software Product or its related systems or networks.

You will not use your Knowledgebase or the Hosted Service to circumvent a contractual usage limit, or to copy the Hosted Service 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 Hosted Service or Software Product, other than framing on your own intranets or otherwise for your own internal business purposes or as permitted in the Documentation. (This limitation on framing shall not prohibit you from providing members of the public access to certain parts of Your KnowledgeBase or Your Data consistent with the licenses included on Exhibit B.) You may not access any Hosted Service or Software Product in order to build a competitive product or service, or reverse engineer any Hosted Service, Knowledgebase or 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 Hosted 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. In addition, if you or your users engage in any of the following activities, you may be deemed in material breach of this Agreement:

- a) You may not use or allow the use of the Hosted Service to display, store, process or transmit: corrupted files, hoaxes, frauds such as pyramid schemes or any other items of a destructive or deceptive nature; material that infringes or misappropriates a third party's intellectual property or proprietary rights; that violates a third-party's privacy rights; that violates applicable law; that is excessively profane; that is hateful or violent; that advocates racial or ethnic intolerance; that is intended to advocate or advance computer hacking or cracking; illegal software; Malevolent Code; or any other material that violates or encourages conduct that would violate any criminal laws, any other applicable laws, or any other third-party rights.
- b) You may not use, or allow anyone else to use the Hosted Service to: generate or facilitate unsolicited commercial email (spam). Spam activity includes, but is not limited to: sending email in violation of the CAN-SPAM Act or any other applicable anti-spam law; imitating or impersonating another person or email address, creating false accounts for the purpose of sending spam; mining or harvesting any web property (including any data not belonging to you) to find email addresses or other user account information; sending unauthorized mail via open, third-party servers; and sending email to users who have requested removal from a mailing list.
- c) You may not use, or allow anyone else to use, the Hosted Service in connection with illegal peer-to-peer file sharing; to engage in or promote gambling, to run a gambling operation; to sell, distribute or export prescription drugs or other controlled substances; to sell, distribute or promote drug paraphernalia; to corrupt minors; or to access any other service or website, directly or indirectly, in a manner that violates the terms for use of or access to such service or website. Nothing in this subsection c) shall prohibit you

from including in Your Data or Your KnowledgeBase work on contracts for you or vendors with whom you work to provide prescription drugs or other controlled substances associated with patients who receive care from your medical facilities.

4.6. Removal of Software Product and Other Applications. If a third party contends that any content in our Hosted Service or Software Product violates applicable law or third-party rights, and if we are directed to remove such content in our Software Product or Hosted Service, we will notify you and you will promptly remove such content from your Knowledgebase. If we receive information that integration with any Other Application may violate the terms set out in this §4 or applicable law or third-party rights, and if we so notify you, you will promptly disable or modify such Other Application to resolve the potential violation. If you do not take the actions described in this subsection, we may disable your use of the applicable Software Product, Hosted Service or Other Application, or any part of any of these, until the potential violation is resolved.

4.7 Export Compliance. Our Hosted Service, 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 Hosted Service or Software Product in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

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5. OTHER APPLICATIONS

5.1 Acquisition of Other Applications and Hosted Service. 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 Hosted Service or 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 Hosted Service or 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 Hosted Service or 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 we cease to make the Other Application available for interoperation with the corresponding Hosted Service or Software Product for any reason, you will not be entitled to any refund, credit, or other compensation.

6. FEES AND PAYMENT

6.1 Fees. You agree to pay all fees as set out in the applicable Quote, regardless of actual usage. 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 valid and updated credit card information, or with a valid purchase order or alternative payment documents acceptable to us. If you provide credit card information to us, you authorize us to charge such credit card for our Hosted Service and Software Product as set out in the Quote for the initial term and any renewal term(s) as described in §12.2 (Renewals and Termination). We will invoice you in accordance with the relevant Quote. This section is expressly subject to Section 14.8, below.

6.3 Payment Due Dates. Unless otherwise stated in the Quote, invoiced charges are due 45 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 will 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 for our Hosted Service 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 Hosted 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 Hosted Service to you.

6.6 Payment Disputes. At our discretion, we may choose not to exercise our rights under §6.3 (Overdue Charges) or §6.4 (Suspension of Hosted 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 Hosted Service or Software Product is not contingent on the delivery of any prospective (meaning future, not-yet-implemented) functionality or features, or dependent on any oral or written comments made by us regarding future functionality or features.

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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 the Hosted Service and 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 Host your Knowledgebase. You grant us a limited term license to host your Knowledgebase, and any Other Applications and program code created by or for you, as necessary in conjunction with your use of our Hosted Service. Subject to the limited licenses granted herein, we acquire no right, title or interest in or to your Knowledgebase, your Data, or any Other Application.

7.4 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 the Hosted Service any suggestion, enhancement request, recommendation, or other feedback provided by you or your users relating to the operation of the Hosted Service.

7.5 Federal Government End use Provisions. We provide the Hosted Service, 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 the Hosted Service 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.

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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. Agiloft, Inc. acknowledges that you are subject to the California Public Records Act and accordingly that copies of this Agreement and any other written agreements between Agiloft, Inc. and you relating to these services, along with certain other materials, are disclosable to the public on request.

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.

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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 Unconditional Satisfaction Guarantee. We offer a 90 (ninety) day, full money-back guarantee on our Hosted Service, Software Product and Agiloft implementation services. If you are not absolutely delighted, you may cancel the Hosted Service for any reason within 90 days of your initial purchase order. Unless specifically excluded in the Quote, this guarantee covers the software and all 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 the Hosted Service during the applicable term; that the Hosted Service 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 Hosted Service during the current term, and that the Hosted Service and 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 §§12.3 (Termination) and 12.4 (Refund or Payment upon Termination).

9.4 Mutual Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, OUR SOFTWARE PRODUCT AND HOSTED SERVICE ARE PROVIDED "AS IS" AND NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR 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 HOSTING PROVIDERS.

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10. MUTUAL INDEMNIFICATION

10.1 Indemnification Obligations. The parties agree that the indemnification obligations between them are as set forth in Section 8 of the AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND AGILOFT, INC. FOR PROFESSIONAL SERVICES (the "Professional Services Agreement"), executed concurrently with this Agreement. Section 8 of Professional Services Agreement is hereby incorporated into this agreement by reference.

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11. MUTUAL LIMITATION OF LIABILITY

11.1 Limitations of Liability and Exclusion of Consequential and Related Damages. The parties agree that the limitations of liability and exclusions of consequential and related damages between them are as set forth in Section 8 of the AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND AGILOFT, INC. FOR PROFESSIONAL SERVICES (the "Professional Services Agreement"), executed concurrently with this Agreement. Section 8 of Professional Services Agreement is hereby incorporated into this agreement by reference.

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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. 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. New 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 pro-rated to the end of your current contract term. Unless we agree otherwise in writing, decreases in service or the number of licenses must be made at the end of your current term.

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.

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 Data Portability and Deletion. Your complete Data may be exported by you at any time while this Agreement is in effect, using the standard administrative interface. Upon written request by you made within 7 (seven) days after the effective date of termination or expiration of this Agreement, we will make your Data available to you for export or download as provided in the Documentation. After that 7-day period, we will have no obligation to maintain or provide your Data, and may thereafter delete or destroy all copies of your Data in our systems or otherwise in our possession or control as provided in the Documentation, unless prohibited by applicable law from doing so.

12.7 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," "Data Portability and Deletion," "Governing Law and Exclusive Jurisdiction," and "General Provisions" will survive any termination or expiration of this Agreement.

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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 Hosted 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) 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.
- b) 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.
- c) 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.

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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 (expressly excluding all 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.

14.7 Exhibits. Attached to this Agreement and incorporated by this reference are the following documents:

Exhibit A – Additional Terms of Standard and Premium Support

Exhibit B: Quotation for San Mateo County

14.8 Not to Exceed Amount. In no event shall your total fiscal obligations under this Agreement exceed four-hundred thirty thousand dollars (\$430,000).

Agiloft, Inc.

(Second Party)

By: Bridget Conrad
Authorized Signatory

By: _____
Authorized Signatory

Name: Bridget Conrad

Name:

Title: VP, Customer Services

Title:

Date: 07-17-2015

Date: _____

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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, 5:00am to 5:00pm PST 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 5:00am to 5:00pm PST, 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 question	24 hours	If a workaround or answer can be provided, the correction may 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;
- b) failure of telecommunications or internet hardware or equipment;
- 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.

Exhibit B: Quotation for San Mateo County



460 Seaport Court, Suite 200, Redwood City, CA 94063
Phone: 650-587-8615 | Fax: 650-745-1209

Quotation for San Mateo County

Date Submitted: June 22, 2015
Expiration After 90 days
Date:

Submitted To: Joanne Ward
Phone Number: 650-363-4122

Email: jmward@co.sanmateo.ca.us

Submitted By: Patricia Pritts
Phone Number: 650-587-8615:709
Email: patricia.pritts@agiloft.com

Thank you for your interest in Agiloft services.

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Executive Summary

The software licenses include access to all Agiloft functionality and modules, with the exception of License Lifecycle Management (LLM), summaries of which are provided below. For SaaS/hosted service, there is a fee associated with optional items such as Web Services.

7. Licenses

License Types

Assigned Power User. This is our main license type. An "assigned power user" license is used by someone who regularly works in the staff interface of the system, for instance as a support technician, contract manager, sales person, project manager, change approver, or marketing director -- essentially a user who has the authority to work on (edit) other people's records as well as his/her own. Assigned power user licenses are tied to a user, but if the user does not login for 30 days, they are automatically freed up. They can also be manually reassigned if an employee leaves the company, and are available for reassignment 24 hours after being freed up.

Floating Power User. A floating power user license is best used by staff who are infrequent system users. Typically managers, contract approvers, executives, or others, they may login for brief periods to create, view, or edit requests or approvals, or run reports. They have the same privileges as an Assigned Power User, but their license is freed up as soon as they logout, so another staff person may use it.

If you purchase 5 floating power users, up to 5 people may be logged in at one time under these licenses, and when one person logs out, the license is freed up after a 2 minute delay so another user can login and use that license.

The cost of a Floating license is substantially (2.5 to 3 times) higher than that of an Assigned Power User. This license is cost effective when the number of infrequent users is more than three and there are enough floating licenses to cover the number of infrequent users that are likely to need to access the system at the same time.

The floating power user license is also cost effective for large numbers of users that need power user access, and the maximum number that need to be in the system at the same time is less than 1/3 of the total number of users sharing the floating licenses. For example, in a large organization, 40 floating licenses may be a sufficient pool to support 300 power users, making floating licenses a good option.

Unlimited End Users. We also offer a license for an unlimited number of end users which provides access to the built-in customizable End User Portal. End users may be internal employees or external users who are "customers" of the system. They interact with the system only through the End User Portal, and they do not have access to charts and reports (although they can receive scheduled charts and reports via email). They can create records, and they can view any records they are permitted to view. Their edit privileges are strictly limited to editing only records they "own." For instance a support customer can edit his own support tickets. Or a contract requester can edit his own requested contracts only.

License Pricing

Licenses are available for SaaS hosted service and for purchase for on-premise installation. The prices shown below do not include taxes or government fees.

Hosted/SaaS Pricing Option

<i>Cost of Cloud Service</i> Upgrades and unlimited support are included.	<i>Cost</i>
Annual license fee for 75 assigned power users with unlimited end users Note: List price is \$780 per user/year. \$600 each for Volume discount for 100-249 total licenses.	\$45,000
Annual license fee for 25 floating power users with unlimited end users Note: List price is \$2,340 per user/year. \$1,800 each for volume discount for 100-249 total licenses.	\$45,000
Less 15% government discount on licenses	-\$13,500
Annual service for a dedicated Server, with free test licenses, additional storage space.	\$9,500
Total annual fee for licenses and dedicated server	\$86,000

Hosted service requirements and payment:

- The initial term of this agreement is 5 years, starting on October 1, 2015 and ending on September 30, 2020. The per license and server pricing will remain fixed during this period. The number of users may not be reduced during the five year term. However, if additional user licenses are needed, they may be added to the service at any time at the same per user prices, and the fees will be prorated to the next anniversary date of the contract. As an example, if users are added on April 1, 2016, their annual cost would be prorated to the end of the first contract year, September 30, 2016. The next annual invoice would be increased to add these users to the annual fee.
- The service will be invoiced annually on the anniversary date of the first invoice.

Dedicated server with FTP access:

Standard Hosted service is provided on a shared server that is also used by other customers. Customers may elect to sign up for a dedicated server instead at \$9,500 per year: this provides:

- Double the storage space (2,000 MB/power user versus 1,000 MB/power user on a shared server)
- Control over the timing of upgrades and maintenance
- SFTP access to the server

- Access to the Administrator console of Agiloft to control certain features, such as backup times, frequency of timed searches, etc.
- Company domain URL access and SSL certificate configuration at no additional charge (i.e. your own company URL to access the server)
- Ability to directly upload and download custom scripts, login pages, and to store files on the server
- Reduced cost to enable the Rest or Web Services API
- Free test licenses for a Test/Development copy of the production KB with the ability to refresh the Test instance as often as needed

Optional Hosted Services: The services below are optional, and are not currently included in the services provided to San Mateo County:

- **Extended Enterprise Service** – required for Web Services or REST integration with other systems. Third-party and custom ESA synchronizations may require this service, depending on the integration.
 - 35% of the license fee, or \$3,000, whichever is greater, on a shared server, per year
 - 10% of the license fee, or \$1,200, whichever is greater, on a dedicated server, per year

Note: Reasonable use of built-in integration with Salesforce, QuickBooks, LogMeIn Rescue, or Asset Discovery & Polling does not require this license. Excessive use affecting other customers on a shared server may require a dedicated server, which is available at an additional cost.

- **Enterprise Data Storage Package**
 - For organizations with large storage requirements that exceed their allotted data storage space, custom data storage packages are available. For example, if many contracts that were created by scanning are going to be attached to records, additional storage may be needed. On a shared production server, the allowance is 1,000 MB per power user license. On a dedicated server, the allowance is 2,000 MB per power user license.
 - Enterprise Storage Package pricing depends on the amount of storage and the requirements. The price for 50 GB of additional data storage with full nightly onsite backups, nightly offsite backups without attachments, and weekly offsite backups with attachments, is \$500 per year.

Quantity Discounts and Additional Purchases

Quantity discounts are available when the number of power user licenses is 25 or greater.

When existing customers purchase additional licenses, if they purchase a minimum of five at a time, they will be entitled to a discount percentage which is the greater of:

- the volume discount they would earn with the number of licenses added in this purchase
- the highest volume discount they have earned on any single previous purchase

For purposes of volume, assigned power and floating power user licenses each count as one license and their combined total is used for the volume level.

8. Functionality Overview

Agiloft shall provide San Mateo County access to a system deployed on its cloud infrastructure. See the [Features](#) page at the Agiloft website for additional functionality information, including screen shots.

Multiple user groups may be created with tailored security levels and support for authentication through standardized services such as Google Single Sign On, Active Directory or CAS. Agiloft's branding allows creation of multiple Web Portals to provide different groups of users with tailored experiences based upon their needs.

<i>Agiloft Key Features and Functionality</i>	
Core Functionality	
Graphical Workflow Designer	✓
Business Rules, Escalations, Routing	✓
Custom Tables, Fields and Relationships	✓
Multi-language Support for English, Chinese and French	✓
Multi-Currency Support	✓
Customizable Audit Trail	✓
Customizable End User Portal with Unlimited Sessions/Month	✓
Incident (Case) and SLA Management	✓
Perl and JavaBean Scripting	✓
Knowledge Management	✓
Full Text Search of Database and Attached Files	✓
Secure Socket Layer (All Interfaces)	✓
Custom Domain SSL Application Hosting	✓
Technical Account Management Support	✓
Integration	
Outlook Integration	✓

<i>Agiloft Key Features and Functionality</i>	
REST and Web Service Transactions (up to 1,000,000/Mo. For SaaS option)	✓
Agiloft External System Adaptors	✓
Google Single Sign-On and Google Docs Integration	✓
Email Management and Messaging	
Email Response Management	✓
Auto-Acknowledgement	✓
Standard Response Templates	✓
Staff to End-User Chat	✓
Broadcast Messages	✓
Reporting and Metrics	
Customer Feedback Surveys	✓
Survey Creation: Questionnaire Designer	✓
Reports, Dashboards & Homepages	✓
Report Designer	✓
Excel Reports Integration	✓
Custom Dashboard Design Center	✓
Historical Data Trending	✓
Fixed/Run-time Filtering, Report Drilldown	✓
Scheduled Reports	✓

9. Hosting Infrastructure

Agiloft will maintain a redundant system configuration as described below:

Knowledgebases are hosted on multiple redundant Amazon AWS servers:

1. The primary server is configured with SSD hard drives in a RAID configuration.
2. The database and attached files are mirrored to a slave AWS server
3. Proprietary Amazon cloud technology provides an additional level of redundancy on the primary and secondary servers.

In addition:

- We take automatic snapshots of the secondary AWS server every two hours.
- We periodically restore these snapshots onto a sandbox server and run database and Agiloft integrity checks on it.
- Intel Xeon processors and ECC RAM are used on all servers.
- Dedicated servers are configured with at least 15G RAM.
- Shared servers are configured with at least 30G RAM.
- All servers are protected by AWS firewall configurations.
- Active monitoring is employed on all critical components.
- Redundant DNS service is provided through Amazon AWS

In addition, Agiloft will provide the County of San Mateo with a copy of its IT Disaster Prevention and Recovery Plan, which will contain provisions relating to the restoration of services in the event of a disaster that affects the County's services under this Agreement. If the County has concerns about the content of the IT Disaster Prevention and Recovery Plan, Agiloft and the County will work together to address such concerns to the extent they are commercially reasonable.

10. Security

We contract with independent specialist security companies to conduct 3rd party audits of the hosted service and application software. Please see our [Security Policy](#).

All access to hosted servers is encrypted through use of SSL technology. A firewall restricts server access, and for customers who elect to use a dedicated server, we will be happy to configure the firewalls to only allow access from specific IP addresses.

Customers using a shared server can configure the KB to use a single sign-on capability restricted to their IP address, provided that their firewall allows the use of Active-X controls from designated servers.

We employ a multi-layered security policy, as summarized below.

Development process

The OWASP Enterprise Security API (ESAPI) is used within the application to implement security best practices. Burp Suite Pro is used to test security against external hackers or malicious internal staff users and the software has been further checked using Rational App Scan.

Build/QA process

The QA process includes scanning for malware using both Symantec Endpoint Protection and NOD32. In addition, the build process includes scanning by Clam.

3rd Party Validation

An independent security auditing firm is engaged to test the security of the application and hosting infrastructure after all significant changes. The product was tested by a team from the U.S. Air Force and approved for deployment on the Secure Network at the U.S. Department of Defense. The product was audited by Skyhigh and received the highest possible rating of Enterprise-Ready. Further, we welcome any additional security audits that current or potential customers may wish to perform and will provide any assistance that you may require to conduct a rigorous evaluation.

Hosting Infrastructure

The hosting infrastructure is protected by redundant firewalls and the individual servers are hardened by application of security best practices. For example, the database is only accessible to localhost; the port is closed to all external access. The Amazon facility provides an additional layer of security against Distributed Denial of Service (DDOS) attacks through real-time network monitoring DDOS detection coupled with auto-block to provide automatic traffic black holing.

Security Policy

Security policies and procedures reinforce the software security and infrastructure as documented [here](#).

Deployment

As detailed [here](#), the software provides precise access control at the record and field level, all managed by extensible group permissions. Further, it uses security best practices such as encrypting passwords using the SHA-2 one-way hash function and protecting all communications with SSL encryption.

Personnel

Agiloft personnel will not disclose confidential or proprietary information.