



# Software as a Service Agreement

## Standard Version

---

Contract Number:

Prepared for:

Version:

Version Release Date:

---

# AgilyCom | Software as a Service Agreement

## 1. Background

- 1.1 The parties agree that the Supplier will provide the SaaS to the Customer on the terms and conditions of this agreement.
- 1.2 The Schedules to this agreement set out commercial details about the parties, this agreement and the subject matter of this agreement.

## 2. Term

- 2.1 Subject to clause 2.2, this agreement commences on the Commencement Date and continues for the Initial Term, unless terminated in accordance with its terms.
- 2.2 At the end of the Initial Term and each Subsequent Term, this agreement is automatically extended for a period of time equal to the Subsequent Period. Either party may terminate this agreement by giving at least 90 days' written notice to the other party before the expiry of the Initial Period or then-current Subsequent Period, in which case the termination is effective immediately upon the expiry of that period.

## 3. General obligations

- 3.1 The Customer must:
  - (a) provide all inputs, information and reasonable assistance to the Supplier to enable it to carry out its obligations under this agreement;
  - (b) follow the Supplier's reasonable directions in connection with the use of the SaaS by the Customer or its Authorised Users;
  - (c) use the SaaS in accordance with all applicable laws, including the Privacy Laws; and
  - (d) only use the SaaS and ensure that its Authorised Users only use the SaaS, in accordance with this agreement.

## 4. Access and use of the SaaS

### Licence

- 4.1 Subject to the Customer paying the Fees and complying with the terms of this agreement, the Supplier grants the Customer a non-exclusive, non-transferable right and licence for the Term to:
  - (a) access and use the SaaS; and
  - (b) allow the Customer's Authorised Users to access and use the SaaS, for the Customer's internal business purposes only.
- 4.2 For clarity, the licence under clause 4.1 does not include the right to sublicense to third parties.

### Requirements

- 4.3 The Customer is solely responsible for:
  - (a) ensuring that its network and systems comply with any Systems Requirements; and
  - (b) procuring and maintaining compatible internet accesses and connections that comply with any Systems Requirements and that are suitable so that the Customer and its Authorised Users are able to access and use the SaaS in accordance with this agreement.

### Service Level

- 4.4 The Supplier will use commercially reasonable endeavours to provide the SaaS in accordance with the Service Levels.

## 5. User Credentials

- 5.1 Each Authorised User is entitled to have a single login and password (which may change from time to time) to access and use the SaaS (User Credentials).
- 5.2 The Customer must:
- (a) not allow any set of User Credentials to be used by more than one individual Authorised User;
  - (b) ensure that all User Credentials are kept secure and confidential, and take all steps necessary to ensure that User Credentials are not disclosed, provided or made available to, or otherwise accessed by, any person who is not an Authorised User;
  - (c) if an Authorised User ceases to be an Authorised User (including where they cease to work for the Customer), ensure that the relevant User Credentials are blocked, disabled or changed as soon as practicable; and
  - (d) notify the Supplier immediately after becoming aware that any User Credentials have been disclosed, provided or made available to, or otherwise accessed by, any person who is not an Authorised User.

## 6. Restrictions

- 6.1 The Customer must not, and must ensure that its Personnel do not:
- (a) resupply, resell, sublicense or otherwise allow any other person to access or use the SaaS;
  - (b) decompile, disassemble, reverse compile or otherwise reverse engineer all or any portion of the SaaS, including any source code, object code, algorithms, methods or techniques used or embodied therein; or
  - (c) use the SaaS:
    - (i) to engage in any fraudulent or unlawful behaviour, or to defame, menace or harass any third party;
    - (ii) to gain unauthorised access to or interfere with any online resources or systems of any third party, including by any form of hacking;
    - (iii) to distribute unsolicited emails to third parties, including bulk unsolicited emails;
    - (iv) in any manner that is likely to result in the Supplier's systems, or that of any other person, being affected by any virus, worm, Trojan or similar computer program;
    - (v) in a way that infringes the Intellectual Property Rights or any other rights of any person;
    - (vi) in a way that disrupts, misuses or excessively uses the hardware, bandwidth access, storage space or other resources of the Supplier or its third party service providers or other customers;
    - (vii) use any data mine, scrape, crawl, email harvest or any other process that sends automated queries;
    - (viii) for the purposes of accessing, storing, distributing, providing (including to the Supplier) or otherwise transmitting any information, data, Material or content that:
      - (A) infringes the Intellectual Property Rights of any third party;
      - (B) is unlawful, misleading, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
      - (C) promotes unlawful violence;
      - (D) depicts sexually explicit images; or
      - (E) is discriminatory or promotes discrimination based on race, gender, colour, religious belief, sexual orientation or disability;
    - (ix) in any other manner that is otherwise unacceptable to the Supplier (acting reasonably).

## 7. Acknowledgements

The Customer acknowledges and agrees that:

- (a) to the extent permitted by applicable law and except as otherwise stated in this agreement (including in its Schedules):
  - (i) the Supplier makes no representation or warranty that the SaaS will be free from defects, errors or faults, or that it is fit for any particular purpose; or
  - (ii) the SaaS may not be available from time to time, and the Supplier makes no representation or warranty in relation to the availability of the SaaS;
- (b) the Supplier may but is not obliged to provide the Customer with any update or upgrade to, or any new version of, the SaaS;
- (c) use of any third party product, content or service by the Customer or its Authorised Users as part of or in connection with the SaaS may be subject to separate terms and conditions, whether imposed by the Supplier or by the relevant third party (and the Customer must comply, and must ensure that its Personnel comply, with such third party terms and conditions);
- (d) the Customer is responsible for any data, information or other Material or content that the Customer or its Authorised Users:
  - (i) provide to the Supplier through the SaaS; or
  - (ii) upload or input into or through the SaaS; and
- (e) the SaaS may not be fully compatible with the mobile device or operating system of the Customer or its Authorised Users.

## 8. Fees, payment and taxes

### Fees

- 8.1 The Customer must pay the Fees to the Supplier in accordance with this agreement.

### Invoices

- 8.2 The Supplier will invoice the Customer for the Fees at the times specified in paragraph 2 of Schedule 3.

### Payment

- 8.3 The Customer must pay any invoice issued by the Supplier within the timeframe specified on that invoice or, if no timeframe is specified, within 30 days of the date of that invoice.

### Interest

- 8.4 The Customer must pay the Supplier the applicable Interest on any amount that is overdue by the Customer.

### Taxes

- 8.5 The Fees are exclusive of all applicable Taxes and the Customer agrees to pay any applicable Tax in addition to the Fees. The Supplier may invoice the Customer for the amount of any applicable Taxes and the Customer must pay that amount to the Supplier in accordance with the relevant invoice.

## 9. Intellectual Property

### Supplier IP

- 9.1 The Supplier (or its licensors, as applicable) owns all Intellectual Property Rights in the Supplier Materials (Supplier IP). All modifications and enhancements to the Supplier Materials are also to be treated as Supplier Materials. If the Customer modifies or enhances any Supplier Material (or causes any the Supplier Material to be modified or enhanced) in any way, the Customer assigns to the Supplier all Intellectual Property Rights in those modifications or enhancements immediately from creation.

### Customer IP

- 9.2 Subject to clause 9.1, the Customer retains all Intellectual Property Rights in the Customer Materials and any modification or enhancement to the Customer Materials (Customer IP).

- 9.3 The Customer grants the Supplier a non-exclusive, sub-licensable licence for the Term to use, reproduce, modify, disclose and transmit to third parties the Customer Materials and the Customer IP for the purpose of operating, and allowing the Customer to access and use, the SaaS.

## 10. Confidentiality and Privacy

### Confidentiality

10.1 Each party must:

- (a) keep the other party's Confidential Information secret and confidential;
- (b) only access, use, disclose or reproduce the other party's Confidential Information for the purpose of this agreement or otherwise as permitted under any other provision of this agreement; and
- (c) take all steps reasonably necessary to safeguard the other party's Confidential Information from unauthorised access, use or disclosure.

10.2 A party must not disclose the other party's Confidential Information to any person except:

- (a) as permitted or authorised by any provision of this agreement;
- (b) to its Personnel or professional advisors on a 'need to know' basis provided those persons are bound by confidentiality obligations similar to those set out in this agreement;
- (c) with the other party's written consent; or
- (d) if required by law.

### Privacy

10.3 The Customer must:

- (a) comply with the Privacy Laws in relation to any Personal Information that forms part of the Customer Materials; and
- (b) obtain all required consents, and make all required disclosures and notifications, to ensure that:
  - (i) the Customer has the right to provide and disclose to the Supplier all Personal Information that forms part of the Customer Materials; and
  - (ii) the Supplier has the right to use and disclose all such Personal Information for the purpose of providing, and as required to provide, the SaaS to the Customer and its Authorised Users.

10.4 To the extent the Supplier uses, stores, processes any Personal Information provided or made available to it by the Customer:

- (a) the Supplier will use, store and process such Personal Information in accordance with the applicable Privacy Laws and for the purposes of this agreement; and
- (b) the Supplier will comply with all reasonable directions given by the Customer in relation to the management of such Personal Information, except to the extent that doing so would cause the Supplier to breach any applicable law;
- (c) the Supplier will take such steps as are reasonable in the circumstances to protect such Personal Information from misuse, interference and loss, and from unauthorised access, modification or disclosure; and
- (d) if the Supplier becomes aware of any unauthorised access to or disclosure of any such Personal Information that is held by the Supplier (or its Personnel) (**Data Breach**), the Supplier will:
  - (i) as soon as reasonably practicable after becoming aware of the Data Breach:
    - (A) notify the Customer of the Data Breach; and
    - (B) investigate the Data Breach and provide the results of the investigation to the Customer;
- (e) take all steps as are reasonably necessary in the circumstances to attempt to remedy the Data Breach and prevent or mitigate the consequences of the Data Breach; and

- (f) comply with all reasonable directions of the Customer in connection with the Data Breach, except to the extent that doing so would cause the Supplier to breach any applicable law.

**De-identified data**

- 10.5 Despite any other provision in this agreement, the Supplier and its suppliers may use any data which is de-identified for any purpose.

## 11. Changes to the SaaS

- 11.1 The Customer acknowledges and agrees that, subject to clause 11.2:

- (a) the Supplier may change or refine any feature or functionality of the SaaS, or substitute an alternative for any part of the SaaS, provided that the SaaS retains at least its basic functions, and that the overall performance of the SaaS is not detrimentally affected; and
- (b) all inclusions and functionality of the SaaS are otherwise determined by the Supplier from time to time.

- 11.2 If the Supplier makes any change to the SaaS that is likely to:

- (a) have a material detrimental impact on the Customer or on the Customer's business; or
- (b) detract from a core function of the SaaS,

then:

- (c) the Supplier will notify the Customer of that change; and
- (d) the Customer may terminate this agreement by written notice to the Supplier within 30 days of the notice contemplated in clause 11.2(c). If, within 30 days of the notice contemplated in clause 11.2(c), the Customer fails to notify the Supplier that the Customer does not agree with the change and wishes to terminate this agreement, then the Customer will be deemed to have accepted the proposed change to the SaaS.

## 12. Indemnities

- 12.1 The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including reasonable legal costs) that the Supplier incurs or suffers in connection with:

- (a) any breach of clauses 6 or 10 by the Customer or its Personnel;
- (b) any wilful misconduct, or fraudulent or illegal act or omission by the Customer or its Personnel; or
- (c) any third party claim that the Supplier's use of the Customer Materials in connection with the SaaS or this agreement infringes the rights (including Intellectual Property Rights) of any person.

- 12.2 The Supplier is liable, and indemnifies the Customer from and against, all loss or damage (including reasonable legal costs) that the Customer incurs or suffers in connection with:

- (a) any breach of clause 10 by the Supplier or its Personnel;
- (b) any wilful misconduct, or fraudulent or illegal act or omission by the Supplier or its Personnel; or
- (c) any third party claim that the Customer's use of the SaaS in accordance with this agreement infringes their Intellectual Property Rights (**IP Claim**).

- 12.3 The Supplier is not required to indemnify the Customer in respect of an IP Claim to the extent it is caused by:

- (a) any Intellectual Property Rights, material or thing provided by any person other than the Supplier;
- (b) any modification of the SaaS by any person other than the Supplier or a person authorised by the Supplier; or
- (c) the continued use of the SaaS after the Supplier has provided the Customer a new version or other correction that would have overcome the infringement.

- 12.4 If there is an IP Claim, the Supplier may either (in its absolute discretion):

- (a) obtain for the Customer the right to the continued use of the SaaS in accordance with this agreement;

- (b) replace or modify the SaaS so that the alleged infringement ceases, provided that the replaced or modified SaaS provides the Customer with substantially similar functionality and performance; or
  - (c) where the Supplier is unable to comply with clause 12.4(a) or 12.4(b), terminate this agreement immediately on written notice to the Customer and provide a pro rata refund of any Fees paid in advance after the effective date of termination.
- 12.5 The Customer's liability under an indemnity in clause 12.1 will be reduced to the extent the Supplier's loss or damage is caused by:
- (a) the Supplier; or
  - (b) the Supplier's failure to use reasonable endeavours to mitigate its loss or damage.
- 12.6 The Supplier's liability under an indemnity in clause 12.2 will be reduced to the extent the Customer's loss or damage is caused by:
- (a) the Customer; or
  - (b) the Customer's failure to use reasonable endeavours to mitigate its loss or damage.

### 13. Liability

- 13.1 Subject to clauses 13.2, 13.3 and 13.4, a party's liability to the other party in any Contract Year for any loss or damage that the other party suffers or incurs in connection with this agreement is limited to the Fees paid by the Customer in connection with that Contract Year.
- 13.2 A party is not liable for any Consequential Loss howsoever caused that the other party suffers or incurs in connection with this agreement.
- 13.3 The limitations and exclusions of liability in clauses 13.1 and 13.2 do not apply to liability in relation to:
- (a) any breach of clause 6 by the Customer or any of its Personnel;
  - (b) any fraudulent act or omissions of a party or its Personnel; and
  - (c) the indemnification obligations in clauses 12.1(a), 12.1(c), 12.2(a) and 12.2(c).
- 13.4 The Customer is responsible and liable for any and all access to or use of the SaaS through any of the User Credentials. The Supplier has no responsibility or liability to the Customer in that regard.

#### Australian Consumer Law

- 13.5 If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by the Supplier in connection with this agreement and the Supplier's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 13.1 and 13.2 do not apply to that liability and instead the Supplier's liability for such failure is limited to (at the Supplier's election):
- (a) in the case of a supply of goods, replacing the goods or supplying equivalent goods or repairing the goods; or
  - (b) in the case of a supply of services, supplying the services again or paying the cost of having the services supplied again.

### 14. Termination or suspension

#### Termination or suspension

- 14.1 If:
- (a) the Customer or any of its Personnel has committed a breach of clause 6; or
  - (b) the Supplier receives a request or notice from a third party, and the Supplier determines that such request has merit and is not vexatious, or from a regulatory body requiring the Supplier to cease providing the SaaS to the Customer,

then the Supplier may terminate or suspend (at the Supplier's option) this agreement or the Customer's access to the SaaS by written notice to the Customer, in which case this agreement will terminate or the Customer's access to the

SaaS will be suspended (as applicable) on the date specified in that written notice or, if no date is specified, immediately.

14.2 If the Customer fails to pay the Fees within 30 days of the due date of payment, then the Supplier may suspend the Customer's access to the SaaS by written notice to the Customer, in which case the Customer's access to the SaaS will be suspended on the date specified in that written notice or, if no date is specified, immediately.

14.3 If:

- (a) a party commits a material breach of this agreement (including any failure of the Customer to pay the Fees in accordance with clause 8) that is not remedied within 30 days of receiving written notice of that breach from the other party; or
- (b) an Insolvency Event occurs in relation to a party,

then the relevant other affected party may terminate this agreement by written notice to the other party, in which case this agreement will terminate on the date specified in that written notice or, if no date is specified, immediately.

#### **After termination**

14.4 On termination or expiry of this agreement:

- (a) accrued rights or remedies of a party are not affected;
- (b) the Customer is not entitled to a refund of any Fees paid in advance unless otherwise expressly stated in this agreement;
- (c) any right or licence granted to the Customer under this agreement ceases immediately, and the Customer and its Authorised Users must stop using the SaaS. It is the Customer's responsibility with the support of the Supplier to extract and retrieve any Customer Material from the SaaS before this agreement is terminated or expires; and
- (d) each party must deliver to the other party any of the other party's Confidential Information, and any other property and materials.

#### **Survival**

14.5 Termination or expiry of this agreement will not affect clauses 9, 10, 12, 13, this clause 14.5 and any other provision of this agreement which is expressly or by implication intended to come into force or continue on or after the termination or expiry.

## **15. General**

15.1 A party will not be:

- (a) in breach of this agreement as a result of; or
- (b) liable to the other party for,

any failure or delay in the performance of its obligations under this agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event.

15.2 The laws of New South Wales (Australia) govern this agreement, and each party irrevocably submits to the jurisdiction of the courts of that place and courts competent to hear appeals from those courts.

15.3 A right under this agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.

15.4 The Customer acknowledges and agrees that the Supplier may use subcontractors to provide the SaaS to the Customer under this agreement.

15.5 Each provision of this agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.

15.6 Unless otherwise stated in this agreement, this agreement may only be varied by written agreement between the parties.



- 15.7 Each indemnity in this agreement is a continuing obligation notwithstanding any settlement of account or the occurrence of any other thing, and it is not necessary for the Supplier to incur expense or make payment before enforcing or making a claim under an indemnity.
- 15.8 Any notices relating to this agreement must be sent to the party's representative specified in item 2 or **Error! Reference source not found.** of Schedule 1 (as applicable). A notice will be deemed given:
- (a) if hand delivered – on the date of delivery;
  - (b) if sent by post to or from an address:
    - (i) within Australia – five Business Days after posting; or
    - (ii) outside Australia – 10 Business Days after posting; or
  - (c) if sent by email – the next Business Day after sending, unless the sending party receives an automated message that the email has not been delivered.

## 16. Definitions and interpretation

### Definitions

- 16.1 In this agreement, the terms set out below have the following meaning:

**Additional Conditions** means the additional conditions (if any) specified in item 8 of Schedule 1.

**Authorised User** means any Personnel of the Customer whom the Customer authorises to access and use the SaaS.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Sydney (Australia).

**Business Hours** means 9.00 am to 5.00 pm during Business Days.

**Commencement Date** means the commencement date specified in item 5 of Schedule 1.

**Confidential Information** of a party means:

- (a) information of a confidential nature relating to or developed in connection with the business or affairs of the party which is disclosed to, learnt by, or which otherwise comes to the knowledge of or into the possession of, the other party;
- (b) information designated by that party as confidential; or
- (c) information regarding clients, customers, employees, contractors of or other persons doing business with that party,

but does not include information that:

- (d) is or becomes generally available in the public domain, other than through any breach of confidence;
- (e) is rightfully received by the other party from a third person other than as a result of a breach of confidence; or
- (f) has been independently developed by the other party without using any other Confidential Information of the first party.

**Consequential Loss** includes any indirect, special or consequential loss (being a loss that does not arise naturally, that is, according to the ordinary course of things, whether or not the parties were aware of the possibility of such loss), or any loss of revenues, loss or corruption of data, loss of reputation, loss of profits, loss of bargain, loss of actual or anticipated savings, or lost opportunities (including opportunities to enter into arrangements with third parties).

**Contract Year** means each 12 month period (or part thereof) of the Term, commencing on the Commencement Date.

**Customer** means the entity specified in item **Error! Reference source not found.** of Schedule 1.

**Customer IP** has the meaning given to it in clause 9.2.

**Customer Materials** includes all data, information and any Material (other than the Supplier Materials) the Customer provides to the Supplier through or in connection with its use (or its Authorised Users' use) of the SaaS.

**Data Breach** has the meaning given to it in clause 10.4(d).

**Fees** means the amounts payable by the Customer to the Supplier for the SaaS as specified in paragraph 1 of Schedule 3, and payable in accordance with clause 8.

**Force Majeure Event** means any occurrence, event or omission outside a party's control and, and includes any of the following: a physical natural disaster including fire, flood, lightning or earthquake; war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law; epidemic, pandemic or quarantine restriction; ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency; law taking effect after the date of this agreement; disruption or unavailability of the internet; strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors; and failure of any of the Supplier's third party service providers to provide services, including hosting services.

**Initial Term** means the initial term specified in item 6 of Schedule 1.

**Insolvency Event** in the context of a person means any of the following: a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person; the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth); the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth) or is presumed to be insolvent under the *Corporations Act 2001* (Cth); the person ceases to carry on business; or an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.

**Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, patent, registered or unregistered trade mark, registered or unregistered design, rights in any trade secret, knowhow, trade or business or company name, or right of registration of such rights.

**Interest** means interest on any payment owing under this agreement calculated:

- (a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
- (b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant interest.

**IP Claim** has the meaning given to it in clause 12.2.

**Material** includes software, firmware, tools, documentation, reports, data, diagrams, procedures, plans and other materials.

**Personal Information** has the meaning given to it in the Privacy Act.

**Personnel** of a party include its employees, contractors, directors, officers and agents.

**Privacy Act** means the *Privacy Act 1988* (Cth) as amended, re-enacted or replaced and includes any subordinate legislation issued under it.

**Privacy Laws** means:

- (a) the Privacy Act;
- (b) the Australian Privacy Principles (or APPs) in schedule 1 of the Privacy Act; and
- (c) all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information

**SaaS** means the software as a service described in Schedule 2.

**Service Levels** means the service levels set out in Schedule 4.

**Subsequent Term** means the subsequent term specified in item 7 of Schedule 1.

**Supplier** means the entity specified in item 1 of Schedule 1.

**Supplier IP** has the meaning given to it in clause 9.1.

**Supplier Materials** includes:

- (a) the SaaS and any Material that the Supplier provides or makes available to the Customer; and
- (b) any Material the Customer accesses or uses in connection with the SaaS.

**Systems Requirements** means all system, network and internet requirements for the SaaS, as notified by the Supplier to the Customer from time to time.

**Tax** means any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by a government authority (local, State, Federal or otherwise) from time to time, including any stamp, value added, goods and services or transaction tax, duty or charge, excluding taxes on profit or capital gains.

**Term** means the term of this agreement determined in accordance with clause 2.

**User Credentials** has the meaning given to it in clause 5.1.

### Interpretation

16.2 In this agreement:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) this agreement is not to be interpreted against the interests of a party merely because that party proposed this agreement or some provision in it or because that party relies on a provision of this agreement to protect itself;
- (c) a reference to this agreement includes the agreement recorded by this agreement;
- (d) a reference to a party is a reference to the Supplier or the Customer, and a reference to the parties is a reference to both the Supplier and the Customer;
- (e) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.
- (f) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) the singular includes the plural and vice versa;
- (h) a word which suggests one gender includes the other gender;
- (i) clause headings are for convenient reference only and have no effect in limiting or extending the language to which they refer; and
- (j) terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act) have the meaning given in that Act, unless the context makes it clear that a different meaning is intended.

EXECUTED as an agreement

Executed by:

**AgilyCom Pty. Ltd.** (ABN: 17 613 130 082)

on    /    /    by:

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Full name of Director/Secretary

Executed by

**[Company Name Pty Ltd]** (Business Number)

on    /    /    by:

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Full name of Director/Secretary

# Schedule 1

## Particulars

---

1	<b>Supplier</b>	<b>AgilyCom Pty. Ltd.</b> (ABN: 17 613 130 082) Suite 242, 117 Old Pittwater Road, Brookvale NSW 2100 Australia	
2	<b>Supplier representative</b>	Name:	
		Title:	
		Address:	
		Email address:	
		Phone number:	
3	<b>Customer</b>		
4	<b>Customer representative</b>	Name:	
		Title:	
		Address:	
		Email address:	
		Phone number:	
5	<b>Commencement Date</b>	The date on which this agreement is signed by the last of the parties.	
6	<b>Initial Term</b>	36 (thirty-six) months from the Commencement Date	
7	<b>Subsequent Term</b>	24 (twenty-four) months	
8	<b>Additional Conditions</b>	None	

# Schedule 2

## Software as a Service (SaaS)

---

### AgilyCom

AgilyCom is an Integration-as-a-Managed-Service (IaaS) designed to enable companies to take advantage of the rapidly evolving new economy. AgilyCom is serverless, headless and developed as a microservice architecture, providing a service with high availability and building-block flexibility.

**Customer Project: [CUSTOMER PROJECT NAME]**

[CUSTOMER PROJECT SCOPE and INTEGRATIONS]

# Schedule 3

## Fees

---

### 1. Fees

1.1 [\$X] (excluding GST) per month comprising:

Components	Quantity	Included Integrations	Fees (excl. GST)
AgilyCom Foundation	[X]	[X]	[\$X] per month
AgilyCom Connectors	[X]	[X]	[\$X] per month
Additional Transformations	[X]	[X]	[\$X] per month
<b>Total</b>			<b>[\$X] per month</b>

### 2. Invoicing

- 2.1 The Supplier will invoice the Customer as follows:
  - (a) Monthly in advance, commencing on or around the Commencement Date, and each month thereafter throughout the Term.
- 2.2 As there are a range of AgilyCom services set up and available from project commencement, there will be a charge of **50% of SaaS Fees** outlined in Section 1.1 of Schedule 3 until the production readiness and commissioning of the services.

### 3. Flexibility for New Connectors and Services

- 3.1 The above Fees structure is based on the currently outlined AgilyCom components and services. In the event that new connectors or services are added to the AgilyCom offerings during the Term, the Parties agree to negotiate in good faith to determine the appropriate fees associated with the new additions.
- 3.2 Any new connectors or services added during the Term will be subject to a separate agreement or addendum, outlining the details of the added components, associated transformations and the resulting fees.

# Schedule 4

## Service Levels

---

### 1. Helpdesk

- 1.1 The Supplier will make a helpdesk available to the Customer in accordance with this Schedule 4 once the SaaS is deemed to be in 'production' status.
- 1.2 The helpdesk will be available as follows:
  - (a) Help Centre (Support Portal): <https://agilycom.atlassian.net/servicedesk/customer/portal/1>
  - (b) Telephone (GOC Retail – Partner Support Contact): +61 2 8188 3999
  - (c) Email (GOC Retail – Partner Support Contact): [support@gocretail.com](mailto:support@gocretail.com)
- 1.3 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving support services for the SaaS, and the Customer must not use the helpdesk for any other purpose. The Customer must ensure that all requests for support services that it may make from time to time are made through the helpdesk.
- 1.4 The helpdesk will be operational and adequately staffed during Business Hours on Business Days.
- 1.5 Additionally, the Customer may report critical issues outside of the hours referred to in paragraph 1.4 above. For clarity, all Critical issues reported will continue to be worked on outside of Business Hours.
- 1.6 The Customer agrees that:
  - (a) issues or problems that arise as a result of any Customer data inaccuracy, error or omission are not within the scope of the standard support services provided under this Schedule and are specifically excluded from the calculation of Target response and resolution times and Availability set out below; and
  - (b) if the Customer requests the Supplier to provide support or assistance in the resolution of any Customer data related issues, error or problems, such support or assistance will be charged on a time and materials basis at the rate(s) agreed between the Customer and the Supplier before such support or assistance is provided.

### 2. Response and resolution

- 2.1 Issues raised through the helpdesk will be categorised by the Supplier (acting reasonably) as follows:

<b>Critical (1)</b>	A catastrophic production issue which may severely impact the Customer's production systems, or in which Customer's production systems are down or not functioning, or there is loss of production data, and no procedural work around exists.
<b>High (2)</b>	An issue where the Customer's system is functioning but in a severely reduced capacity. The situation is causing significant impact to portions of the Customer's business operations and productivity. The system is exposed to potential loss or interruption of service.
<b>Medium (3)</b>	A medium-to-low impact issue, which involves partial non-critical functionality loss. One which impairs some operations but allows the Customer to continue to function. This may be a minor issue with limited loss or no loss of functionality or impact to the Customer's operation and issues in which there is an easy circumvention or avoidance by the end user.



<b>Low (4)</b>	A general usage question or recommendation for a future product enhancement or modification. There is no impact on the quality, performance or functionality of the product.
----------------	--

2.2 The Supplier will use reasonable endeavours to respond to requests for support services raised through the Help Centre and resolve reported issues in accordance with the following time periods:

	Target response time	Target resolution time
<b>Critical (1)</b>	1 Business Hour	5 Business Hours
<b>High (2)</b>	4 Business Hours	12 Business Hours
<b>Medium (3)</b>	1 Business Day	7 Business Days
<b>Low (4)</b>	3 Business Days	10 Business Days

2.3 The Supplier’s response to a request for support services will include (to the extent such information is relevant to the request):

- (a) an acknowledgement of receipt of the request;
- (b) where practicable, an initial diagnosis in relation to any reported issue; and
- (c) an anticipated timetable for action in relation to the request.

### 3. Provision of Support Services

3.1 All support services will be provided remotely.

3.2 Support is currently provided from the following locations to meet target response and resolution times as defined by clause 2.2 in this Schedule, as appropriate and determined by the Supplier from time to time:

- (a) Australia
  - (i) Sydney, New South Wales
  - (ii) Melbourne, Victoria
  - (iii) Brisbane, Queensland
- (b) New Zealand
  - (i) Auckland
- (c) Sweden
  - (i) Stockholm
- (d) United States of America
  - (i) Boulder, Colorado

### 4. Availability

4.1 The Supplier will use commercially reasonable efforts to ensure that the SaaS is available for at least the following minimum availability percentage:

<b>SaaS Availability</b>	99.5% availability per month
--------------------------	------------------------------

4.2 Availability is calculated as a percentage on a monthly basis as follows:

$$\text{Availability} = [(A - B) / A] * 100$$

where:

A is the total number of minutes in a month (for each and all days of that month);

B is the total number of minutes during which the SaaS is experiencing an Outage (subject to the exclusions listed in paragraph 4.3); and

Outage means the SaaS is not available to the Customer Authorised Users in a live production environment.

4.3 The following are excluded from the calculation of Availability (and the Supplier is not responsible for a failure to meet the minimum Availability percentage due to the following):

- (a) planned Outages of which the Supplier has notified the Customer in advance;
- (b) any emergency Outage that is due to a security issue or threat;
- (c) any Outage that relates to any equipment (including any equipment or device that the Customer uses in connection with the SaaS), task or service that is the Customer's responsibility, or any outage that is otherwise caused by the Customer; and
- (d) any Outage caused by any Force Majeure Event.

## 5. Service Credits

5.1 In the event that the SaaS does not meet the SaaS Availability in any given month, the Supplier shall apply a service credit calculated as set out in the table below against the Fees payable by the Customer:

Availability for the relevant month	Service Credit
99.500% or greater	No Service Credit
99.499% - 99.000%	5% of the monthly prorated Fees
98.999% - 98.500%	10% of the monthly prorated Fees
98.499% - 95.000%	20% of the monthly prorated Fees
Below 95.000%	35% of the monthly prorated Fees

## 6. Scheduled Maintenance Services

6.1 The Supplier will use commercially reasonable efforts to minimise interruptions to the Customer's use of the SaaS when undertaking scheduled maintenance services from time to time.

6.2 Where practicable, the Supplier will seek to give the Customer at least 2 Business Days' prior written notice of any non-standard maintenance services that are likely to affect the availability of the SaaS or are likely to have a material negative impact on the SaaS.