

**AGILE WORKSPACE LIMITED
END USER LICENCE AGREEMENT**

Agile Workspace Limited, a New Zealand company located at Unit 403 Ironbank, 150 Karangahape Road, Auckland ("**Agile**") and its licensors own the intellectual property rights in the Smartalock system.

The Customer has purchased a Smartalock system for use at the Site named below.

The Smartalock system contains Software and Agile has agreed to license the Software and Documentation to the Customer on the terms and conditions of this End User Licence Agreement ("**EULA**").

Name of Customer: _____ ("**Customer**")

Site of Smartalock system: _____
_____ ("**Site**")

Address of Customer: _____

The Customer acknowledges that the Software and Documentation is provided subject to the terms and conditions of this EULA, and that it has read and accepts the terms and conditions of this EULA.

Signed by Customer: _____

Name and position of Customer's signatory: _____

Date: _____

1. DEFINITIONS

1.1 In this EULA, the following words will have the following meanings:

"**Agile's Infringement Warranty**" has the meaning given to that term in clause 4.9;

"**Agile's Specification Warranty**" has the meaning given to that term in clause 4.1;

"**Distributor**" means Agile's authorised distributor and support provider from whom the Customer purchased the Smartalock system, or such other authorised support provider that Agile may appoint to replace them from time to time;

"**Documentation**" means operating manuals, user guides, specifications and other printed or electronic materials relating to the Software and officially published by Agile from time to time for general availability to licensees or end-users of the Software;

"**Intellectual Property Rights**" means all industrial and intellectual property rights whether conferred by statute, at common law or in equity in or relating to the Software or the Documentation, including, but not limited to, all copyright and similar rights that may subsist in works or other subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to databases, rights in relation to semi-conductor topographies or integrated circuit layouts, rights in relation to registered and unregistered trade marks, business names and rights in relation to domain names;

"**Permitted Person**" means any employee or contractor of the Customer;

"**Permitted Use**" means use of the Software and Documentation solely in conjunction with the Smartalock lock system purchased by the Customer and installed at the Site;

"**Software**" means all software, firmware, applications and computer code (in both source and object code form) within the Smartalock system, including without limitation, the master controller software, the firmware in the locks, the applications installed on the kiosks, the applications

installed on end user devices such as iPhones and the administrator/system management software and also includes all Upgrades;

“Upgrades” means any releases, patches, bug-fixes, upgrades, improvements, developments, new versions, new features or other updates of any of the Software released by Agile from time to time, either for general availability to licensees of the Software or developed for specific customers of Agile;

“Term” means the period of 10 years; and

“Warranty Period” means in relation to the Software, the period of two years from the date the first part of the Smartalock system was first commissioned for the Customer and put into operational use.

2. LICENCE

- 2.1 For the Term, Agile grants to the Customer and the Customer accepts, a non-exclusive, non-transferable licence to use the Software and Documentation solely for the Permitted Use.
- 2.2 The Customer must not permit any person who is not a Permitted Person to access or use the Software or Documentation, and may not disclose the Software or Documentation to any person who is not a Permitted Person. The Customer will be liable for all acts or omissions of its Permitted Persons as if they were the acts or omissions of the Customer.

3. RESTRICTIONS ON USE

3.1 The Customer may not:

- (a) translate, decompile, reverse engineer, reverse compile, reverse assemble or in any manner attempt to derive the source code of the Software, or directly or indirectly allow or cause a third party to do so, except to the extent expressly permitted under applicable law;
- (b) copy the Software or Documentation (or any part of the Software or Documentation) by any means or in any form, without Agile’s prior written consent, provided that the Customer may make one copy of the Software and Documentation for backup purposes;
- (c) attempt to defeat or circumvent any hardware or software lock or licence key or code provided with, or incorporated within, the Software;
- (d) merge all or any part of the Software with any other software;
- (e) modify, adapt, customise, enhance or alter the Software or allow anyone other than Agile to do so, without Agile’s prior written consent, except to the extent expressly permitted under applicable law;
- (f) attempt to devise alternate software that eliminates the need for any of the Software, or
- (g) sell, sub-license, rent, lease or otherwise distribute the Software or Documentation (or any part of the Software or Documentation) to any other person, without the prior written consent of Agile.

3.2 The Customer will:

- (a) be solely responsible for the use of, access to and supervision, management and control of the Software and Documentation and all copies of the Software and Documentation;
- (b) effectively protect the Software and Documentation, and all copies of the Software and Documentation, at all times from misuse, damage, theft, destruction or any form of unauthorised use or access, including by implementing effective and appropriate security measures;
- (c) retain the Software and Documentation, and all copies of the Software and Documentation, under its effective control; and
- (d) only install and use the Software strictly in accordance with the Documentation and any other normal operating procedures for the Software published by Agile from time to time.

3.3 The Customer may not remove, deface or obscure any notices provided on or with the Software or Documentation as to the ownership of such Software or Documentation by Agile or its licensors. The Customer will ensure that any copy of the Software or Documentation made under this EULA bears a notice stating that:

- (a) the Intellectual Property Rights are owned by Agile or its licensors; and
- (b) the Software and Documentation contain valuable information that is confidential and proprietary to Agile.

- 3.4 The Customer acknowledges that any breach of clauses 2.2 or 3.1 to 3.3 may cause Agile irreparable harm for which damages would not be an adequate remedy. In addition to any other remedy available to it, Agile may seek equitable relief (including injunctive relief or specific performance) against any breach or threatened breach of any of clauses 2.2 or 3.1 to 3.3 by the Customer.

4. WARRANTY, SUPPORT AND MAINTENANCE, LIABILITY

Agile's Specification Warranty

- 4.1 Agile warrants that for the Warranty Period, the Software will operate substantially in accordance with the published specifications for that Software. During the Warranty Period, if a Product does not operate substantially in accordance with the relevant specifications, then, subject to compliance with clauses 4.2 to 4.6 below, Agile will use commercially reasonable endeavours to either rectify the defect or provide a replacement of the relevant Product (or part of the Product) ("**Agile's Specification Warranty**").
- 4.2 To claim under Agile's Specification Warranty, the Customer must notify the Distributor in writing of the defect. Agile has appointed the Distributor as its agent to be the first point of contact for the Customer for First and Second Level Support of the Software.
- 4.3 When notifying the Distributor of a defect under clause 4.2, the Customer will provide the Distributor with a documented example of such defect and as much information about the defect as practicable.
- 4.4 The Distributor (acting as Agile's agent) will investigate the reported defect. Subject to clause 4.11, the Distributor will, upon verifying the defect, use commercially reasonable endeavours to either rectify such defect or provide a replacement of the relevant Software (or part or component of the Software), without additional charge to the Customer. The Distributor will also install such replacements without additional charge to the Customer.
- 4.5 Where the Distributor has been unable to rectify the defect after providing First and Second Level Support to the Customer under clause 4.4, the Customer may contact Agile to escalate the defect and request Third Level Support. Agile's contact details are provided in clause 7.1 below, or as updated from time to time on the www.smartalock.com website. Agile will investigate the escalated defect. Subject to clause 4.11, Agile will, upon verifying the existence of the defect, use commercially reasonable endeavours to either rectify such defect or provide a replacement of the relevant Software (or part or component of the Software), without additional charge to the Customer. Agile will also install such replacements without additional charge to the Customer.
- 4.6 To validly claim under Agile's Specification Warranty, the Customer agree must:
- (a) review and follow the Smartalock self-help, troubleshooting and support Documentation published at support.smartalock.com before escalating a defect to Agile for Third Level Support;
 - (b) be responsible for any expenses or costs incurred in making the claim, including any costs associated with contacting the Distributor or Agile; and
 - (c) fully co-operate with the Distributor and Agile when they are investigating and rectifying reported defects, including by allowing the Distributor and Agile full access to relevant premises and systems.
- 4.7 Unless the Customer has entered into a separate extended support agreement directly with Agile, and subject to clause 4.19, the obligations under clauses 4.4 and 4.5 will be Agile's sole obligation, and the Customer's sole remedy, in the event of defect, issue or problem with any Software or any failure of any of the Software to operate in accordance with the relevant specifications.
- 4.8 To the maximum extent permitted under applicable law, Agile makes no warranty that the operation of any Software will be completely error-free or uninterrupted, and the Customer acknowledges and agrees that the existence of such errors or interruptions will not constitute a breach of this EULA.

Agile's Infringement Warranty

- 4.9 Agile warrants to the Customer that to the best of its knowledge, the use of the Software by the Customer in accordance with the Documentation will not infringe the intellectual property rights of

any third party. If there is a breach of such warranty, Agile will indemnify the Customer in accordance with clause 10 (“**Agile’s Infringement Warranty**”).

- 4.10 Subject to clause 4.11 and 4.13, Agile will indemnify the Customer against any and all losses, costs, expenses, demands and liabilities incurred or suffered by the Customer arising directly from a breach of Agile’s Infringement Warranty, provided that if the Customer wishes to be indemnified under this clause 4.10 it must:
- (a) promptly notify Agile of any relevant claim or legal proceeding and make no admission or settlement without Agile’s prior written consent;
 - (b) allow Agile to participate in and control any defence, compromise, settlement, resolution or disposition of such claim or proceeding and if Agile elects to conduct the defence of such claim or proceeding, the Customer must:
 - (i) provide Agile with reasonable assistance and information in conducting the defence of such claim or proceeding (including by ensuring the Customer’s directors, employees, agents or sub-contractors give such advice, evidence or statements as Agile may reasonably request); and
 - (ii) give Agile the sole control of, and the complete authority to conduct, the defence of such claim or proceeding and to negotiate and settle such claim or proceeding, as Agile may determine in Agile’s absolute discretion; and
 - (c) allow Agile to either:
 - (i) modify or substitute the infringing part of the Software to avoid continuing infringement; or
 - (ii) obtain the authority to enable the Customer to continue to possess and use the relevant Software,
at Agile’s option and expense.

- 4.11 Subject to clause 4.19, Agile will not be liable for a breach of Agile’s Specification Warranty or Agile’s Infringement Warranty, and will not indemnify the Customer under clause 4.10, to the extent that any defect, fault or infringement, or suspected defect, fault or infringement is caused or contributed to by any:
- (a) use or operation of any Software not in accordance with the Documentation or not reasonably contemplated by Agile;
 - (b) failure by the Customer to follow the Smartalock self-help, troubleshooting and support Documentation published at support.smartalock.com;
 - (c) faults, problems, changes or outages in or to any IT, WIFI or other system or any other software that adversely affects the operation of the Software or the Smartalock system, including without limitation, reboots or changes to the Customer’s networks, upgrades to non-Smartalock software or changes to firewalls;
 - (d) faults, problems, changes or outages outside of Agile’s control, such as Acts of God or changes to Customer premises;
 - (e) improvements, modifications, additions, customisations, enhancements, developments, patches releases, bug fixes or changes in or to any Software, other than those made by Agile;
 - (f) use or interoperation of any Software with any other computer programs or software;
 - (g) any negligent act or omission of the Distributor, the Customer or their personnel or any other third party;
 - (h) any incorrect configuration or installation of the Software, except where such incorrect configuration or installation is caused by Agile or the Distributor;
 - (i) any virus, worm, trojan horse, backdoor, time-lock or any other malicious or disabling code, unless introduced by Agile;
 - (j) any lockers, hardware, equipment, accessories, attachments, supplies, consumables or other items of the Customer or the Distributor not supplied by Agile; or
 - (k) operator errors.

Agile reserves the right to charge for time spent by Agile personnel on reported defects that are caused or contributed to by any of the matters listed in this clause 4.11.

Additional guarantees under consumer laws

- 4.12 The New Zealand Consumer Guarantees Act 1993 and the Australian Competition and Consumer Act 2010 (including the Australian Consumer Law 2011), as well as other laws in those jurisdictions (“Consumer Law”), guarantee or imply certain conditions, warranties and undertakings, and give consumers other legal rights, in relation to the quality and fitness for purpose of certain products sold in New Zealand and Australia respectively.

- 4.13 For products sold in New Zealand, if the customer is in trade and acquiring the Products in trade, the customer agrees that the New Zealand Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(a) of the Fair Trading Act 1986 will not apply, and that it is fair and reasonable that it is bound by the provisions of this clause.
- 4.14 For products sold in Australia, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 4.15 The benefits given by Agile's Specification Warranty and Agile's Infringement Warranty are in addition to any other rights and remedies the customer may have under the Consumer Law applicable to the purchase of the Products. Except as otherwise provided by Agile's Specification Warranty and Agile's Infringement Warranty above, all warranties, terms, conditions, guarantees or similar, other than those which cannot be excluded under applicable Consumer Law, are expressly excluded by Agile to the extent legally permitted.

Agile's liability

- 4.16 To the maximum extent permitted under applicable law, Agile is not responsible for any loss or corruption of any data or information caused or contributed to by the Software or use of the Documentation.
- 4.17 To the maximum extent permitted under applicable law, in no event will Agile be liable (whether in contract, tort including negligence, or otherwise) to any Customer for:
- (a) loss of revenue and/or profit, loss of anticipated savings, loss of goodwill or opportunity, loss of production, business interruption, loss or corruption of data or wasted management or staff time; or
 - (b) loss, damage, cost or expense of any kind whatsoever that is indirect, consequential, or of a special nature,
- arising directly or indirectly out of the Software, even if Agile had been advised of the possibility of such damages, and even if such loss, damage, cost or expense was reasonably foreseeable by Agile.
- 4.18 Subject to clauses 4.17 and 4.19, the maximum liability of Agile to the Customer arising out of Agile's Specification Warranty, Agile's Infringement Warranty, this EULA, or otherwise relating to the Software or Documentation, will not exceed NZD5000.00 for all Software licensed to or used by the Customer.
- 4.19 None of the exclusions or limitations in this EULA will have the effect of limiting or excluding any liability to the extent such liability cannot be so limited or excluded by applicable law. Where Agile cannot legally limit its liability as provided in clauses 4.16 to 4.18 under applicable law, if permitted by such applicable law, Agile limits its liability under the Specification Warranty, the Infringement Warranty and any other implied guarantee that cannot be lawfully excluded, to (at Agile's election):
- (a) replacement of the Product;
 - (b) repair of the Product;
 - (c) payment of any cost of replacing the Product or of acquiring equivalent products; or
 - (d) payment of the cost of having the Product repaired.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 The Customer acknowledges that:
- (a) Agile or its licensors own the Software and Documentation and all the Intellectual Property Rights;
 - (b) the Software and Documentation are and contain valuable confidential and proprietary information of Agile and its licensors; and
 - (c) no licence, right or other interest in the Software, Documentation or any Intellectual Property Rights is granted to the Customer, except as expressly stated in this EULA.
- 5.2 All improvements, modifications, customisations, enhancements or developments in or to the Software or Documentation made by Agile or the Customer ("Improvements") and all intellectual property rights in and to them, will be owned by Agile or its licensors. The Customer agrees to

execute all documents and do all things necessary to vest legal ownership of the intellectual property rights in such Improvements in Agile or its licensors.

6. TERM AND TERMINATION

- 6.1 Subject to clause 6.2, this EULA will commence on the date that the Customer first uses any of the Software and remain in full force and effect until the expiry of the Term.
- 6.2 Agile may terminate this EULA and the licence granted under it at any time if the Customer:
- (a) fails to comply with any of the terms of this EULA;
 - (b) ceases or threatens to cease to carry on its business, becomes bankrupt or insolvent, is unable to pay its debts as they fall due, enters into a general assignment of its indebtedness or a scheme of arrangement or composition with its creditors, or takes or suffers any similar action in consequence of debt;
 - (c) has a trustee, manager, administrator, administrative receiver, receiver, inspector under any other legislation or similar officer appointed in respect of the whole or any part of the Customer's assets or business, or enters into liquidation (other than voluntarily for the purpose of a solvent amalgamation or reconstruction);
 - (d) being an individual, dies or is physically incapacitated; or
 - (e) being a partnership, is dissolved.
- 6.3 Upon termination or expiry of this EULA, the Customer will stop using the Software and Documentation and will at Agile's option, but at the Customer's cost, return or destroy all copies of the Software and Documentation in the Customer's possession or control.
- 6.4 Clauses 3, 4.8, 4.11 to 4.19, 5 and 6 will survive termination or expiry of this EULA for any reason.

7. GENERAL

- 7.1 Agile may be contacted at:
Unit 403, 150 Karangahape Road, Auckland Central 1010, New Zealand
Phone: +64 9 280 4521
E-mail: sales@smartalock.com
- 7.2 The Customer may not assign, transfer or sub-license this EULA, or its rights and obligations under it, without Agile's prior written consent.
- 7.3 If any provision of this EULA is held invalid, unenforceable or illegal for any reason, this EULA will remain otherwise in full force apart from such provisions, which will be deemed deleted.
- 7.4 All variations of this EULA must be in writing and signed by authorised representatives of both parties.
- 7.5 No failure or delay by either party to exercise any right or remedy under this EULA will be treated as a waiver of such right or remedy. No single or partial exercise of any right or remedy will present the further exercise of such right or remedy.
- 7.6 This EULA shall be governed by and construed in accordance with New Zealand law. Agile and the Customer irrevocably agree that New Zealand courts will have non-exclusive jurisdiction to hear and determine all disputes under or in relation to the Software or this EULA. Agile and the Customer waive any objections to New Zealand as the forum for proceedings on the grounds of forum non-conveniens or otherwise.