

# Agilos Managed Services Terms of Use and Conditions

The terms and Conditions of this Agreement apply to all Agilos Solutions under Management Services provided to End User by Agilos. The Solutions in Management Services that End User agrees to procure from and that Agilos agrees to provide, as well as the applicable fees, are set forth in these Terms and Condition, and Order Forms that are effective and binding when signed by representatives of End User and Agilos. The Terms and Conditions are deemed incorporated into and form a part of Order Form. Solutions in Management Services provided by Agilos that are not specified in an Order Form, or that are provided prior to the execution of an appropriate Order Form, are also subject to these Terms and Conditions, unless these Management Services are expressly covered by a separate agreement signed by representatives of each Party.

## 1. DEFINITIONS

"**Agreement**" means the Terms of Use and Conditions for Agilos Solutions, Managed Service and all materials referred or linked to in here.

"**Paid Users**" means those types of Users (defined below) for which Agilos charge fees as set forth in its Product and Services Catalog.

"**Billing Period**" means the period for which you agree to prepay fees under an Order Form, which will be the same as or shorter than the Managed Service Subscription Term. For example, if you subscribe to the Managed service for a three (3) year Subscription Term, with a twelve (12) month upfront payment, the Billing Period will be twelve (12) months.

"**Confidential Information**" means all information provided by you or us ("Discloser") to the other ("Receiver"), whether orally or in writing that is designated as confidential. Confidential Information will include Customer Data and information about the Discloser's business plans, technical data, and the terms of the Order. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Discloser or (ii) was known to the Receiver before receipt from the Discloser.

"**Contact**" means a single individual (other than a User) whose Contact Information is stored by you in the Managed Service.

"**Contact Information**" means the name, email address, phone number, online user name(s), telephone number, and similar information uploaded by you to the Managed Service.

"**Consulting Services**" means the professional services provided to you by us, which may include training services, or other consulting services.

"**Order**" or "**Order Form**" means the Agilos approved form by which you agree to subscribe to the Managed Service and purchase Consulting Services. The Order may be referred to as a "Statement of Work" if you are purchasing only Consulting Services.

"**Product and Services Catalog**" means Agilos Product and Services Catalog, updated by us from time-to-time.

"**Management Services Subscription Fee**" means the amount you pay for subscribing to the Managed Services.

"**Managed Services**" means all of our web-based solutions, tools, platforms, and services that you have subscribed to by an Order Form or that we otherwise make available to you, and are developed,

operated, and maintained by us, and any ancillary products and services, including website hosting, that we provide to you.

"**Managed Services Subscription Term**" means the initial term of your subscription to the applicable Management Services, as specified on your Order Form(s), and each subsequent renewal term (if any).

"**Third-Party Products**" means embedded products which are used in connection with the Managed Services.

"**Users**" means your employees, representatives, consultants, contractors or agents who are authorized to use the Managed Service for your benefit and have unique user identifications and passwords for the Managed Services.

"**Agilos**", "**we**", "**us**" or "**our**" means the applicable contracting entity as specified in the 'Contracting Entity and Applicable Law' section.

"**You**", "**your**" or "**Customer**" means the person or entity using the Managed Services or receiving the Consulting Services and identified in the applicable account record, billing statement, or Order Form as the customer.

## 2. GENERAL COMMERCIAL TERMS

**2.1. Access.** During the Managed Services Subscription Term, we will provide you access to use our solutions and services as described in this Agreement and the applicable Order.

**2.2. Availability.** We try to make the Managed Service available 24 hours a day, 7 days a week, except for planned down-time for maintenance.

**2.3. Consulting Services.** You may purchase Consulting Services by placing an Order with us. Unless we otherwise agree, the Consulting Services we provide are described in the Product and Services Catalog. Fees for these Consulting Services are in addition to your Managed Services Subscription Fee. If you purchase Consulting Services that recur, they will be considered part of your subscription and will renew in accordance with your subscription.

**2.4.** All Consulting Services are performed remotely, unless you and we otherwise agree.

If there are a specific number of hours included in the Consulting Services purchased, those hours will expire as indicated in the applicable description, which expiration period will commence upon purchase (the "Expiration Period"). If there are deliverables included in the Consulting Services purchased, it is estimated that those deliverables will be completed within the time period indicated as the delivery period in the applicable description, which delivery period

will commence upon purchase (the "Delivery Period"). If there is no Expiration Period or Delivery Period indicated, then it will be one hundred and eighty (180) days from purchase. If the Consulting Services provided are not complete at the end of the Delivery Period due to your failure to make the necessary resources available to us or to perform your obligations, such Consulting Services will be deemed to be complete at the end of the Delivery Period. If the Consulting Services provided are not complete at the end of the Delivery Period due to our failure to make the necessary resources available to you or to perform our obligations, the Delivery Period will be extended to allow us to complete such Consulting Services.

Consulting Services are non-cancellable and all fees for Consulting Services are non-refundable.

### 3. FEES AND PAYMENTS

**3.1. Managed Services Subscription Fees.** The Managed Services Subscription Fee will remain fixed during the Subscription Term unless you: (i) subscribe for additional Users (ii) upgrade products or base packages, (iii) subscribe to additional features or products or (iv) unless otherwise agreed to in the Order.

**3.2. Fee Adjustments During a Billing Period.** If you (i) subscribe for additional Users (ii) upgrade products or base packages, (iii) subscribe to additional features or products, you will be invoiced for the additional Subscription Fee pro-rated the remaining Billing Period.

**3.3. Next Billing Period.** upon renewal, your subscription will be adjusted to match the number of Users actually assigned at the end of your then-current Subscription Term. For more detail on renewal pricing, see the 'Term and Renewal' section below.

**3.4. Payment against invoice.** We will invoice you no more than forty-five (45) days before the beginning of the Subscription Term and each subsequent Billing Period, and other times during the Subscription Term when fees are payable. All amounts invoiced are due and payable within thirty (30) days from the date of the invoice, unless otherwise specified in the Order Form.

All payment obligations are non-cancellable, and all amounts paid are non-refundable, except as specifically provided for in this Agreement. All fees are due and payable in advance throughout the Subscription Term.

**3.5. Tax.** All fees are exclusive of any VAT, which we will charge as applicable. You agree to pay any taxes applicable to your use of the Managed Services and performance of Consulting Services.

### 4. LIMITATION OF USE

**4.1. Prohibited and Unauthorized Use.** You will not (i) use the Managed Services in any manner that damages, disables, overburdens, or impairs any of our websites or interferes with any other party's use of the Managed Services; (ii) attempt to gain unauthorized access to the Managed Services; (iii) access the Managed Services other than through our interface; or (iv) use the Managed Services for any purpose or in any manner that is unlawful or prohibited by this Agreement.

You will notify us right away of any unauthorized use of your Users' identifications and passwords or your account by login to Agilos Web Support application.

### 5. SUBSCRIPTION TERM, TERMINATION, SUSPENSION

**5.1. Term and Renewal.** Your initial Managed Services subscription period will be specified in your Order, and your subscription will automatically renew for the shorter of the subscription period, or one year. To prevent renewal of the subscription, the required notice must

be provided within the timeframe as specified in the 'Subscription Types' section below. If you add products during the Subscription Term, the fees for these additional products will be pro-rated and they will renew along with your subscription, unless otherwise indicated in your Order.

The renewal pricing set forth in your Order will apply, subject to adjustment as specified in the 'Fees and Payments' section above. If renewal pricing is not included in your Order, then our standard pricing available in our Product and Services Catalog on the date of renewal will apply.

See the 'Limits' section below for the applicability of product limits on renewal.

**5.2. No Early Termination; No Refunds.** The Managed Services Subscription Term will end on the expiration date and the subscription cannot be cancelled early. We do not provide refunds if you decide to stop using the Agilos Solutions subscription during your Subscription Term.

**5.3. Termination for Cause.** Either party may terminate this Agreement for cause, as to any or all Managed Services Subscription: (i) upon thirty (30) days' notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation or assignment for the benefit of creditors. We may also terminate this Agreement for cause on thirty (30) days' notice if we determine that you are acting, or have acted, in a way that has or may negatively reflect on or affect us, our prospects, or our customers. This Agreement may not otherwise be terminated prior to the end of the Subscription Term.

**5.4. Suspension for Prohibited Acts.** We may suspend any User's access to any or all Managed Services without notice for: (i) use of the Managed Service in a way that violates applicable local, laws or regulations or the terms of this Agreement.

**5.5. Suspension for Non-Payment.** We will provide you with notice of non-payment of any amount due. Unless the full amount has been paid, we may suspend your access to any or all of the Managed Services Subscription ten (10) days after such notice. We will not suspend the Managed Service while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. If a Managed Service is suspended for non-payment, we may charge a re-activation fee to reinstate the Service.

**5.6. Upon termination or expiration of this Agreement,** you will stop all use of the affected Managed Services Subscription Data. We may provide you the opportunity to retrieve Customer Data after termination or expiration as specified in the 'Retrieval of Customer Data' section below. If you terminate this Agreement for cause, we will promptly refund any prepaid but unused fees covering use of the Managed Services after termination. If we terminate this Agreement for cause, you will promptly pay all unpaid fees due through the end of the Subscription Term. Fees are otherwise non-refundable.

### 6. MANAGED SERVICES SUBSCRIPTION TERMS

**6.1. Customer Support.** If you pay us a Managed Services Subscription Fee, support is included at no additional cost. Support for these Subscriptions is available from Monday to Friday, 9 am to 5 pm through Agilos web support. We attempt to respond to email support questions within one business day; in practice, our responses are generally even faster. We do not promise or guarantee any specific response time.

**6.2. Notice of Non-Renewal.** Your subscription will automatically renew according to the 'Term and Renewal' section above.

Unless otherwise specified in your Order, to prevent renewal of your Managed Services Subscription, you or we must give written notice of non-renewal and this written notice must be received no less than sixty (60) days in advance of the end of the Subscription Term. If you decide not to renew, you may send the notice of non-renewal by email to [contact@agilos.com](mailto:contact@agilos.com).

**6.3. Retrieval of Customer Data.** For Managed Services Subscriptions, as long as you have paid all fees owed to us, if you make a written request within thirty (30) days after termination or expiration of your subscription, we will provide you with copies of, all Customer Data then in our possession or control. Thirty (30) days after termination or expiration of your Subscription, we will have no obligation to maintain or provide you the Customer Data and may, unless legally prohibited, delete all Customer Data in our systems or otherwise in our control.

## 7. GENERAL LEGAL TERMS

**7.1. Customer Data Confidentiality.** The Receiver will: (i) protect the confidentiality of the Confidential Information using the same degree of care that it uses with its own confidential information of similar nature, but with no less than reasonable care, (ii) not use any Confidential Information for any purpose outside the scope of this Agreement, (iii) not disclose Confidential Information to any third party, and (iv) limit access to Confidential Information to its employees, contractors, advisors and agents. Upon notice to the Discloser, the Receiver may disclose Confidential Information if required to do so under any federal, state, or local law, statute, rule or regulation, subpoena or legal process.

**7.2. Publicity.** You grant us the right to add your name and company logo to our customer list and website.

**7.3. Indemnification.** You will indemnify, defend and hold us harmless, at your expense, against any third-party claim, suit, action, or proceeding (each, an "Action") brought against us (and our officers, directors, employees, agents, service providers, licensors, and affiliates) by a third party not affiliated with us to the extent that such Action is based upon or arises out of (a) unauthorized or illegal use of the Managed Service by you, (b) your noncompliance with or breach of this Agreement, (c) your use of Third-Party Products, or (d) the unauthorized use of the Managed Service by any other person using your User information. We will: notify you in writing within thirty (30) days of our becoming aware of any such claim; give you sole control of the defence or settlement of such a claim; and provide you (at your expense) with any and all information and assistance reasonably requested by you to handle the Défense or settlement of the claim. You shall not accept any settlement that (i) imposes an obligation on us; (ii) requires us to make an admission; or (iii) imposes liability not covered by these indemnifications or places restrictions on us without our prior written consent.

### 7.4. Disclaimers; Limitations of Liability

**7.4.1. No Indirect Damages.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA OR BUSINESS OPPORTUNITIES.

**7.4.2. Limitation of Liability.** EXCEPT FOR YOUR LIABILITY FOR PAYMENT OF FEES, YOUR LIABILITY ARISING FROM YOUR OBLIGATIONS UNDER THE 'INDEMNIFICATION' SECTION, AND YOUR LIABILITY FOR VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS, IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, EITHER PARTY IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD

PARTY, THE PARTIES AGREE THAT THE AGGREGATE LIABILITY OF A PARTY WILL BE LIMITED TO THE TOTAL AMOUNTS YOU HAVE ACTUALLY PAID FOR THE SUBSCRIPTION SERVICE IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM.

### 7.5. Miscellaneous

**7.5.1. Amendment; No Waiver.** We may update and change any part or all of these Customer Terms of Service, including the fees and charges associated with the use of the Managed Service (but, your fees and charges won't change during the Subscription Term except as we explain in the 'Fees and Payments' section above.) When we change these Customer Terms of Service, the "Last Modified" date above will be updated to reflect the date of the most recent version. If you do not agree with a modification to the Customer Terms of Service, you must notify us in writing within thirty (30) days after receiving notice of modification.

**7.5.2. Force Majeure.** Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

**7.5.3. Actions Permitted.** Except for actions for non-payment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

**7.5.4. Compliance with Laws.** We will comply with all European laws in our provision of the Subscription Service, the Consulting Services and our processing of Customer Data. You will comply with all laws in your use of the Subscription Service and Consulting Services, including any applicable export laws.

**7.5.5. Severability.** If any part of this Agreement or an Order Form is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect.

**7.5.6. Entire Agreement.** This Agreement (including each Order), is the entire agreement between us for the Managed Services and Consulting Services and supersedes all other proposals and agreements, whether electronic, oral or written, between us. We object to and reject any additional or different terms proposed by you, including those contained in your purchase order, acceptance or website. Our obligations are not contingent on the delivery of any future functionality or features of the Managed Services or dependent on any oral or written public comments made by us regarding future functionality or features of the Managed Services. We might make versions of this Agreement available in languages other than English. If we do, the English version of this Agreement will govern our relationship and the translated version is provided for convenience only and will not be interpreted to modify the English version of this Agreement.

**7.5.7. Assignment.** You will not assign or transfer this Agreement, including any assignment or transfer by reason of merger, reorganization, sale of all or substantially all of your assets, change of control or operation of law, without our prior written consent, which will not be unreasonably withheld. We may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.

**7.5.8. Authority.** Each party represents and warrants to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.

**7.5.9. Survival.** The following sections shall survive the expiration or termination of this Agreement: 'Definitions', 'Fees and Payments', 'Prohibited and Unauthorized Use', 'No Early Termination; No Refunds', 'Termination for Cause', 'Suspension for Prohibited Acts', 'Suspension for Non-Payment', 'Effect of Termination or Expiration', 'Retrieval of Customer Data', 'Customer's Proprietary Rights', 'Confidentiality', 'Publicity', 'Indemnification', 'Disclaimers; Limitations of Liability', 'Miscellaneous' and 'Contracting Entity and Applicable Law'.

**7.5.10. Precedence.** In the event of a conflict between the terms of the Customer Terms of Service and an Order, the terms of the Order shall control, but only as to that Order.

## 8. JURISDICTION SPECIFIC TERMS

**8.1.1. Contracting Entity and Applicable Law.** This Agreement, its construction, validity or performance, shall be governed by Belgian law. Excluding its conflict of laws rules; The Courts of Brussels (Belgium) in their territorial scope shall have exclusive jurisdiction on dispute relating thereto.

## Appendix 1:

### AGILOS MSP QAAS (QLIK AS A SERVICE)

The Agilos MSP QaaS is a SaaS solution, fully hosted and managed by Agilos. No manual deployment or updates are required.

The **maximum size of a dashboard** in the Agilos Professional Cloud is 2.5 Gb, in the Agilos Enterprise Cloud it is 5 Gb. A bigger dashboard size can individually be agreed upon.

The **total available data storage** in the Agilos Professional Cloud is 1Tb up to 25 users, and 1Tb extra for every next band of 25 users. (Eg. with a 26-50 user subscription, Client gets 2Tb, with 51-75 users 3Tb, etc.). For the Agilos Enterprise Cloud, the total available data storage is 2Tb up to 25 users, and 2Tb extra for every next band of 25 users. (Eg. with a 26-50 user subscription, Client gets 4Tb, with 51-75 users 6Tb, etc..).

### Required Provisions for use of Qlik Software

Agilos Client acknowledges that the Agilos Managed Services contains or incorporates proprietary software, owned by Qlik and Qlik's affiliates ("Qlik Products"). Client is expressly prohibited from using the Qlik Products in any way other than as integrated with Agilos Managed Services, and Client has no license or any other right to the Qlik Products. Upon termination or expiration of this Agilos Managed Services, Client shall have no right to receive any license or access to the Qlik Products utilized by Client as part of the Managed Services. Client cannot use the Qlik Products, provided under Managed Services for purposes of benchmarking, collecting and publishing data or analysis relating to the performance of the Qlik Products, or developing a product that is competitive with any Qlik product or service.

2. Qlik and its vendors and licensors will not have any liability or responsibility to Agilos Clients. Agilos Clients', rights to access/use the Qlik Products, will be immediately terminated upon breach of any of these terms. Qlik and its affiliates are third party beneficiaries of this agreement and may enforce the applicable terms and conditions of this agreement as they relate to Qlik

3. Agilos Clients shall not, directly or indirectly: (i) sell, rent, sublicense, publish, display, loan, distribute or lease the Qlik Products; (ii) transfer to any other person or entity any of its rights to use the Qlik Products except as expressly permitted hereunder;

(iii) reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the Qlik Products or underlying ideas or algorithms of the Qlik Products or any software contained therein, or create derivative works from the Qlik Products unless explicitly permitted by applicable and mandatory law; (iii) remove, delete or modify any copyright notices or any other proprietary notices or legends on, in or from the Qlik Products; or (iv) use the Qlik Products in any manner not authorized by this agreement.

4. Qlik and its affiliates, or their respective suppliers or licensors where applicable, own and retain all right, title and interest in and to the Qlik Products, and their respective patents, trademarks (registered or unregistered), trade names, service marks, logos, designs, copyrights, trade secrets and confidential information. Customer does not acquire any right, title or interest in or to the Qlik Products or any intellectual property rights contained therein. Individual software components, each of which has its own copyright and its own applicable license conditions ("Third Party Software") may be distributed, embedded, or bundled with the Qlik Products. Such Third-Party Software is separately licensed by its copyright holder. No representations, warranties or other commitments of any kind are made regarding such Third-Party Software.