

Agilyx Integration Machine (AIM)

Master Subscription Agreement



This Master Subscription Agreement ("**Agreement**") is entered into on the date of execution of the Order Form by the Customer (the "**Effective Date**") which also binds the Customer to and incorporates the terms and conditions of this Agreement with Agilyx Pty Ltd ACN 091 232 156 of 202/19 Harris St Pyrmont 2009 New South Wales ("**Agilyx**"), and the entity that is the signatory to the relevant Order Form ("**Customer**").

1. Definitions

1.1 **Affiliate** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

1.2 **Agilyx Integration Machine ('AIM')** is a service that receives Customer Data from a defined endpoint on the Customer's system or an authorised third party system, transforms this data (if required), and then transfers the resulting Customer Data to or from:

- (a) a defined Customer endpoint on the Customer's system or on another system under the Customer's control; or
- (b) a third party endpoint for which the Customer is authorised to connect to,

for the purposes of integrating these systems.

1.3 **Confidential Information** means:

- (a) any information relating to a party or their Affiliates which is disclosed under or in relation to this Agreement, in any medium or format, provided that such information is marked or described as confidential or is information that a reasonable person, considering the information and circumstances of disclosure, would understand to be confidential;
- (b) all Order Forms, Statements of Work, AIM and AIM documentation;
- (c) all Customer Data; and
- (d) any information, notes, analysis, copies, processes, methods or products derived from the information set out above.

1.4 **Customer Data** means all of the Customer's electronic data (which may include personal information).

1.5 **Cloud Implementation** means the deployment of the AIM via the Hosting Environment. For clarity, Cloud Implementations do not entail the permanent storage of any Customer Data in either AIM or the Hosting Environment, however does entail:

- (a) transmissions of such Customer Data to and from an Integrated Third Party Application; and
- (b) temporary storage of such Customer Data for a purpose

consistent with AIM including but not limited to queuing of data whilst an endpoint is offline, the Customer requiring temporary storage, Agilyx testing, troubleshooting and debugging.

1.6 **Hosting Environment** means the hardware, software, networks, and peripherals used by Agilyx or its third party hosting providers to host AIM.

1.7 **Integrated Third Party Application** means a hosted Customer or third party application, excluding AIM. Each connection between AIM and an Integrated Third Party Application is referred to as an "**application connection**" or "**endpoint**".

1.8 **Insolvency Event** in respect of a party means:

- (c) that party is insolvent or is petitioned in bankruptcy;
- (d) the party, being a company, a petition for winding up the company is presented;
- (e) an order is made or an application is brought or a resolution is passed for its winding up;
- (f) any step is taken to appoint a receiver or receiver and manager or administrator or liquidator to that party; or
- (g) the party makes any arrangement for the benefit of creditors.

1.9 **Order Form** means the Agilyx AIM Order Form document that is entered into between the Customer and Agilyx for the purchase of a subscription to AIM and any Professional Services or related services which will state Customer's entitlement to agreed components such as:

- (a) AIM capacity, licence fee and period;
- (b) Professional Services to be rendered and fees;
- (c) any other mutually agreed-to limitation on the use of AIM.

1.10 **Professional Services** means implementation services and other professional services that the parties may agree Agilyx will perform for Customer pursuant to an agreed upon Statement of Work.

1.11 **Security Incident** means an event in which Customer Data processed in AIM is accessed or received by a third party which is not authorized to access or receive such information.

1.12 **Statement of Work or SOW** means a mutually agreed upon document that describes:

- (a) AIM to be licensed;
- (b) Integrated Third Party Applications to be connected;
- (c) application connections or endpoints, and/or any other connectors or APIs;
- (d) production, test and/or development environments,

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- (e) API policies selected by Customer;
- (f) the Professional Services to be rendered;
- (g) the schedule for providing the Professional Services; and
- (h) associated pricing.

Each SOW will be subject to the terms and conditions of this Agreement.

1.13 **Subscription Term** means the period of authorized use of AIM as stated in the Order Form.

1.14 **User** means an individual authorized by the Customer to use AIM-related services for the Customer's benefit only, and for whom a user identification has been established. A User may include, an employee, consultant, contractor, and/or agent of the Customer.

2. Right to Use AIM.

2.1 **Right of Use.** Subject to the payment of all applicable fees, Agilyx grants to the Customer a revocable, non-exclusive, non-transferable (including no sub-licensing is permitted), right to access and use AIM for use with Integrated Third Party Applications listed in the SOW for the Subscription Term.

2.2 **Restrictions.** The rights in clause 2.1 apply solely to Integrated Third Party Applications listed in the SOW that AIM will connect to. The Customer will access and use AIM solely:

- (a) for Customer's internal business purposes to effect the transmittal of Customer Data between Integrated Third Party Applications;
- (b) in accordance with Agilyx documentation and applicable law; and
- (c) in accordance with the authorized level of functionality and quantity purchased by the Customer.

In its use of AIM, Customer will not:

- (d) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make AIM available to any third party other than its Users;
- (e) copy AIM or any part, feature, function or user interface;
- (f) reverse engineer or attempt to ascertain the source code of AIM, or otherwise use or access AIM for any purpose other than as provided for in this Agreement;
- (g) remove any product identification, proprietary, copyright, or other notices contained in the components of AIM.

In addition, the Customer shall not use AIM to:

- (h) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;
- (i) send or store infringing, obscene, threatening, or

otherwise unlawful material, or in violation of third party privacy rights;

- (j) interfere with or disrupt the integrity or performance of the AIM; or
- (k) attempt to gain unauthorized access to AIM or related systems or networks, including the Hosting Environment.

2.3 **Users.** The Customer may authorize Users to use AIM solely on behalf of and for the Customer's benefit. The Customer will remain liable for the compliance of Users with the terms and conditions of this Agreement and with any relevant AIM user guides.

2.4 **Integrated Third Party Applications.** AIM contains features designed to interoperate with Integrated Third Party Applications. Customer is solely responsible for obtaining and maintaining access to Integrated Third Party Applications from the applicable providers. Agilyx is not liable to the Customer for this and will not provide the Customer with any refund, credit, or other compensation for any errors, delays, downtime, or non-performance of AIM caused by the temporary or permanent unavailability of the Integrated Third Party Application, any defects with the Integrated Third Party Application, or if the Customer terminates its subscription or licence to the Integrated Third Party Application. If the Customer establishes an integration between the Integrated Third Party Application and AIM made available via a Cloud Implementation, the Customer hereby authorizes Agilyx to access and transmit Customer Data to and/or from the Integrated Third Party Application during the Subscription Term and subject to Agilyx's other obligations under this Agreement incidental to such transfer. Agilyx is not responsible for any disclosure, modification or deletion of Customer Data occurring in or caused by a Third Party Integrated Application.

2.5 **AIM Related Services.** From time to time, Agilyx may grant the Customer credentials to use Agilyx services related to AIM (for example, credentials to access Agilyx's helpdesk portal or credentials permitting the Customer to securely connect with AIM for the purposes of initiating an ad-hoc integration). Such credentials will be granted at Agilyx's discretion and may only be used by the Customer subject to Agilyx's limitations and solely for the purpose of using AIM in accordance with this Agreement. [

2.6 **Third Party Service Providers.** The Customer may select third parties other than Agilyx to perform implementation and other consulting services related to the Customer's use of AIM. Any acquisition by the Customer of such non-Agilyx services is solely between the Customer and the applicable provider. Agilyx does not endorse or warrant implementation or other consulting services performed by any third party, whether or not such third parties are recommended by Agilyx, participants of any Agilyx partner program, and/or designated by Agilyx as "certified" or "accredited" other such similar reference. The Customer is solely responsible for ascertaining whether such third party providers

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meet the Customer's needs.

3. Uptime Commitment.

3.1 **Availability.** Agilyx will use commercially reasonable efforts to make AIM available 99.5% of the time excluding any of the following periods:

- (a) planned downtime; and
- (b) unscheduled downtime caused by: (i) circumstances beyond Agilyx's reasonable control (including, but not limited to: acts of God, acts of government, flood, fire, earthquake, civil unrest, acts of terror, strike or other labour problem, hosting provider failure or delay, issues related to Third Party Integrated Applications, or denial of service attacks); (ii) circumstances entitling Agilyx to suspend access to AIM; and (iii) the Customer's or a User's failure to use AIM in accordance with Agilyx documentation.

4. Professional Services.

4.1 **Performance of Professional Services.** If mutually agreed in an Order Form or Statement of Work, Agilyx will perform Professional Services as expressly described in such documents. The provision of Professional Services by Agilyx is dependent on the Customer providing:

- (a) reasonable access to relevant resources;
- (b) all relevant information; and
- (c) timely decisions and input in connection with those Professional Services.

In the event of any delays in the Customer's provision of such assistance, Agilyx may adjust any agreed timetable or delivery schedule as reasonably necessary. Unless otherwise expressly provided for in the Order Form or SOW, unused Professional Services hours will expire 3 months from the relevant purchase date.

4.2 **Right to Use Deliverables.** Agilyx grants to the Customer a non-exclusive, non-transferable right and license during the Subscription Term to use deliverables prepared or created by Agilyx in the course of performing the Professional Services, subject to the same terms and conditions applicable to Customer's authorized use of AIM. Agilyx retains all right, title and interest in and to Agilyx's Professional Services templates, methodologies, tools, know-how, and any modifications, enhancements or derivative works of AIM, Agilyx documentation, and Agilyx's Confidential Information used to deliver the Professional Services and/or incorporated into a deliverable (collectively, "**Agilyx IP**"). To the extent that any of the foregoing rights in the Agilyx IP vest in Customer for any reason, the Customer hereby assigns and transfers without reservation or rights of reversion all of the Customer's right, title and interest in and to any and all of the Agilyx IP without

further compensation. Should the assignment be unenforceable, in whole or in part, for any reason, Customer hereby grants Agilyx an exclusive, irrevocable, perpetual, royalty-free, worldwide right and license to use the Agilyx IP for any and all business purposes without further compensation to the Customer.

5. Security.

5.1 **Information Security.** In connection with the Hosting Environment used to make AIM available to Customer in the Cloud Implementation, Agilyx will operate an information security program designed to protect Customer Data processed through the Hosting Environment using industry standard policies and technologies.

5.2 **Security Incidents.** Agilyx will take prompt action to respond to any Security Incident and to prevent the further unauthorized use or disclosure of Customer Data, and/or to correct the issues within AIM (to the extent that AIM gave rise to such Security Incident).

5.3 **Encryption.** To the extent that personal information moves through AIM, such data will be encrypted by Agilyx using industry-standard encryption methods.

6. Customer Data.

6.1 **Use of Customer Data.** The Customer grants to Agilyx (and its Affiliates) a non-exclusive, worldwide, limited, revocable and royalty-free license to process the Customer Data on the Customer's behalf solely as necessary for Agilyx to provide AIM during the Subscription Term, and/or perform related Professional Services for the Customer. This license shall terminate on the date that is the later of:

- (a) the date of expiration or termination of the Subscription Term; or
- (b) the last date related services are provided.

6.2 **Customer Data Warranty.** The Customer warrants that:

- (a) it has all consents and authorities required to use and send to Customer Data to AIM for the purpose contemplated by this Agreement; and
- (b) sending Customer Data to and through AIM does not infringe any third party's intellectual property rights.

6.3 **Customer Obligations.** For Customer Data processed by Agilyx pursuant to clause 6.1, the Customer is the data controller and Agilyx is a data processor. Customer Data may be transferred outside the country where it is located if and as necessary to effect the transfer of such Customer Data for the purpose of using AIM, in which case the Customer is solely responsible for ensuring that has all consents and authorities required by law to transfer (and authorize Agilyx to transfer)

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the relevant Customer Data to Agilyx and back to the Customer under this Agreement. The Customer will ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation.

- 6.4 **Mutual Obligations.** Each party agrees to take appropriate technical and organizational measures against unauthorized or unlawful processing, accidental loss, destruction or damage of any personal information or personal data obtained from the other party.

7. Virus and Malware Detection.

- 7.1 **Safeguards.** Each party agrees to maintain in the devices and systems used with AIM, reasonable and commercially-available technical safeguards to detect and prevent the introduction of computer viruses, malware, ransomware, trojan horses, cancelbots, or other unauthorized computing routines designed to disable, erase, lockup, damage or corrupt software, hardware or data.

8. Fees and Payment.

- 8.1 **Fees.** Licences to use AIM are sold as an annual subscription for the prices and fees in the Order Form. All prices and fees are exclusive of Goods and Services Tax ("GST") and other applicable sales taxes. Except as otherwise expressly specified in this Agreement or an Order Form and/or Statement of Work, all fees and charges are non-cancellable and non-refundable.
- 8.2 **Invoicing.** The Customer will be invoiced for the total annual subscription amount outlined in the Order Form in advance. The invoice will be issued on or soon after the date an executed Order Form is received by Agilyx. On the date that is 30 days before each anniversary of that date (each such anniversary date is a "**Renewal Date**"), the Customer will be invoiced for the total annual subscription amount outlined in the Order Form unless prices or fees increase under this clause 8 or termination occurs in accordance with this Agreement.
- 8.3 **Payment.** Fees and charges are due and payable 30 days from the date of the invoice. The Customer agrees to provide complete and accurate billing and contact information to Agilyx and notifying Agilyx of any changes to such information.
- 8.4 **Interest.** If payment of an invoice is late, Agilyx may charge interest and recovery costs for the overdue amount. The rate of interest is 10% per annum above the Commonwealth Bank of Australia Overdraft Index Rate (OIR) as published from time to time which Agilyx will calculate and charge so

that interest accrues monthly on the overdue amount plus any previously accrued interest.

- 8.5 **Price updates.** All prices in the Order Form are current as at the date of issuing that Order Form. Agilyx is entitled to increase the prices on an annual basis, effective on the Renewal Date, and on each anniversary thereafter in accordance with this clause, up to a maximum of the higher value of:

- (a) 5%; or
- (b) the annual increase in the Australian Consumer Price Index (CPI, All Groups) as published by the Australian Bureau of Statistics.

- 8.6 **Additional Use.** If additional capacity in excess of the amount set out in the Order Form is required, you must request further capacity from us by submitting a further Order Form. Additional capacity will be provided during the current subscription period pro-rata for the same price per annum as the original Order Form for the same period, but this price may later be varied by Agilyx effective at the Renewal Date for subsequent subscription terms in accordance with this Agreement. If you disclose or we discover a discrepancy in capacity licenced and/or users having access to or using the AIM, we will provide you with an invoice for the additional capacity licenses under this Agreement.

Where the Customer uses capacity in excess of the amount set out in the Order Form, such excess use by the Customer is deemed that the Customer has given consent to Agilyx:

- (a) issuing an invoice for such excess use (in arrears and/or in advance) on 30 day payment terms; and/or
- (b) electing (at Agilyx's reasonable discretion) to 'throttle' traffic of data transmissions via AIM or purge data from AIM to the extent required to bring the Customer's use of AIM back to the agreed capacity levels as set out in the Order Form.

- 8.7 **Future Functionality.** Order Forms and purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Agilyx regarding future functionality or features.

9. Suspension of AIM.

- 9.1 **Suspension for Non-Payment.** If any amount owed by the Customer under this Agreement is 7 days overdue, Agilyx may immediately suspend Customer's access and use of AIM and/or performance of any related services until such amounts are paid in full. Agilyx will give the Customer 7 days' notice in writing the account is overdue and that suspension will occur before suspending under this clause 9.1.

- 9.2 **Other Rights of Suspension.** In addition to the suspension right in clause 9.1, Agilyx reserves the right to suspend the

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licence of AIM:

- (c) for the Customer's violation of its obligations under this Agreement;
- (d) if Agilyx determines that the security or proper function of AIM may be compromised due to hacking, denial of service attacks or other activities constituting or having the potential to constitute a Security Incident;
- (e) if Agilyx receives credible legal notice that Customer does not possess requisite rights to access or use an Integrated Third Party Application;
- (f) if Agilyx determines that the Customer's continued use may violate applicable law or third-party rights.. To the extent reasonably practicable given the nature of the issue giving rise to a suspension, Agilyx will promptly notify Customer of such suspension in writing.

Agilyx will use diligent efforts to the extent reasonably practicable to limit the suspension only to the affected portions of AIM and will reinstate such access as promptly as possible after verifying the issue giving rise to the suspension has been satisfactorily resolved.

10. Term and Termination

10.1 Subscription Term and Renewal. This Agreement will commence upon the Effective Date and continue until the earlier of:

- (c) expiration or non-renewal of the Subscription Term, or
- (d) termination of this Agreement pursuant to this clause 10.

10.2 Termination for Cause. A party may terminate this Agreement immediately if the other party:

- (a) breaches any material term of this Agreement and fails to cure such breach within 30 days of receipt of written notice from the non-breaching party specifying the nature of the breach; or
- (b) suffers an Insolvency Event;
- (c) infringes or wilfully misuses an intellectual property right belonging to, or licensed by, the first mentioned party and the other party has not ceased such activities within 7 days of being given written notice of such.

10.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason:

- (a) the Customer's right to access and use AIM, any Agilyx documentation, any Agilyx deliverables and Agilyx IP, will terminate;
- (b) the parties shall cease all use of and permanently destroy or return the other party's Confidential Information;
- (c) any Customer Data residing in or in transit in AIM will be purged from AIM by Agilyx (and Agilyx will not retain any Customer Data).

10.4 Survival. The provisions of clauses 2.1, 8, 10.3, 10.4, 11, 12, 14, 15, 16 will survive any termination or expiration of this Agreement.

11. Confidentiality

11.1 Confidential Information. A party must keep confidential, and must not disclose, or use for any purpose other than contemplated by this Agreement, the terms of this Agreement or any Confidential Information supplied by the other party in connection with this Agreement.

11.2 Compelled Disclosure. A party may disclose Confidential Information to the extent compelled by law to do so, provided the affected party is given prior reasonably notice of the compelled disclosure.

12. Proprietary Rights

12.1 Ownership. Agilyx will own all right, title, and interest in and to AIM, Agilyx documentation, and Agilyx's Confidential Information, including any customizations, modifications, adaptations, or derivative works and all intellectual property rights in respect of such. As between the Customer and Agilyx, the Customer will own all right, title, and interest in and to the Customer Data, the Customer's Confidential Information, and all intellectual property rights in respect of such. All rights not expressly granted by one party to the other under this Agreement are expressly and unconditionally reserved.

12.2 Statistical Information. Agilyx may compile and use de-identified, aggregate and statistical information related to the performance of AIM, provided that such information does not incorporate any Customer Data, or identify the Customer, Users, or any of the Customer's Confidential Information.

12.3 Suggestions. If the Customer provides Agilyx with any suggestions, ideas, enhancement requests, feedback, recommendations concerning the features and functions of AIM ("**Suggestions**"), the Customer hereby grants Agilyx and its Affiliates a non-exclusive, royalty-free, worldwide, perpetual, irrevocable license to freely use, disclose, and otherwise exploit such Suggestions, including by incorporating the Suggestions into future versions of AIM.

13. Warranties

13.1 Performance Warranty. Agilyx warrants that AIM will perform in all material respects with the functions described in the then-current Agilyx documentation for AIM. Should the Customer discover an error giving rise to a breach of this warranty, the Customer shall provide Agilyx with written notice of such error no later than 30 days of the Customer's discovery of the error. The Customer's sole and exclusive remedy for Agilyx's breach of the

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warranty in this clause 13.1 is for Agilyx to use commercially reasonable efforts to promptly repair or replace non-conforming part of AIM at no additional charge to the Customer.

13.2 Intellectual Property Warranty. Agilyx warrants that AIM and all intellectual property rights in AIM are either owned by or validly licensed to Agilyx.

13.3 Professional Services Warranty. Agilyx warrants that any Professional Services it performs will be performed in a professional and workmanlike manner in accordance with industry standards. The Customer's sole and exclusive remedy for Agilyx's breach of this provision will be (at Agilyx's election):

- (a) Agilyx's re-performance of the applicable services; or
- (b) a credit note to the value of the applicable services,

that fail to comply with this warranty at no additional charge to the Customer.

13.4 Exclusion of Warranties. To the full extent permitted at law, Agilyx:

- (a) gives no warranties and makes no statements except as expressly stated in this Agreement; and
- (b) expressly disclaims any implied terms or warranties. Agilyx does not warrant that AIM is error free or not susceptible to malware, viruses or attacks, or that AIM will operate without problems, issues or interruptions from time to time.

14. Indemnification

14.1 Agilyx Indemnity. Agilyx will defend any action brought against the Customer by a third party to the extent based upon a claim that AIM, AIM documentation, deliverables as provided by Agilyx to the Customer and used within the scope of this Agreement, infringe any third party intellectual property right, and Agilyx will pay direct loss, costs, damages and reasonable legal fees attributable to such claim that are awarded against the Customer or agreed upon by Agilyx in settlement. This indemnity will not apply to the extent the claim results from:

- (a) the combination of AIM with any software or hardware not supplied by Agilyx;
- (b) modifications or derivative works of AIM, Agilyx documentation, deliverables by anyone other than Agilyx; or
- (c) the Customer's breach of this Agreement or the Customer's violation of applicable law or the rights of third parties which gives rise to the claim.

14.2 Customer Indemnity. The Customer will defend any action brought against Agilyx by a third party to the extent based

upon a claim arising or resulting from: (a) Customer Data; (b) the Customer's unauthorized use or processing of the Customer Data; (c) any unauthorized use of Integrated Third Party Applications by the Customer or Users in violation of applicable law or any third party rights, and the Customer will pay direct loss, costs, damages and reasonable legal fees attributable to such actions that are finally awarded against Agilyx or agreed upon by the Customer in settlement. This indemnity shall not apply to the extent the claim results from Agilyx's breach of this Agreement or Agilyx's violation of applicable law or the rights of third parties which gives rise to the claim.

14.3 Indemnity Requirements. The indemnifying party's obligations in this clause 14 are conditioned on the indemnified party: (a) giving the indemnifying party prompt notice of the third party claim or action; (b) providing reasonable assistance and information to the indemnifying party for the defence of the claim; and (c) allowing the indemnifying party to control the defence of any applicable claim or action, except that the indemnified party may elect to engage its own lawyers at its own expense and the indemnifying party will have no right to bind the indemnified party to terms other than the terms and conditions in this Agreement or admit liability by the indemnified party in any claim or settlement without the indemnified party's prior written consent, which will not to be unreasonably withheld or delayed.

14.4 Additional Infringement Remedy. If the Customer's use of AIM, any Agilyx documentation or any deliverables under this Agreement is claimed against (or in Agilyx's opinion is likely to be enjoined pursuant to clause 14.1 above), then Agilyx may, at its sole option and expense:

- (a) procure for Customer the right to continue using the infringing items under the terms of this Agreement;
- (b) replace or modify the infringing items so that they are non-infringing and substantially equivalent or better in function to that of the enjoined items; or
- (c) if options (a) and (b) above cannot be accomplished despite Agilyx's commercially reasonable efforts, then Agilyx may terminate the Customer's rights and Agilyx's obligations hereunder with respect to such infringing items and remit to the Customer any pre-paid fees for the remainder of the Subscription Term.

15. Limitation of Liability

15.1 Limitation. Subject to this clause 15, to the full extent permitted at law, neither party's aggregate liability arising out of or related to this Agreement will exceed the total amount paid by the Customer under this Agreement in the 12 months preceding the incident giving rise to the claim (whether the claim or action is in contract, tort, statute or equity, and regardless of the nature of liability).

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15.2 The limitation in clause 15.1 does not apply to:

- (a) a claim in respect of a violation of intellectual property rights under this Agreement;
- (b) the extent that fees owed by the Customer exceed the limitation (this includes overuse);
- (c) a liability for a breach of privacy laws.

15.3 **No consequential loss.** To the extent permitted at law, in no event will either party be liable for any special, punitive, exemplary, indirect, incidental, cover or consequential damages or damages or loss which does not naturally arise, or for damages related to business interruption, even if the party knew or should have known of the possibility of such damages, arising out of or relating to this Agreement.

15.4 **Lost data.** In no event will Agilyx be liable for lost Customer Data and the Customer shall keep a backup of Customer Data before and after transiting through AIM.

16. General

16.1 **Marketing.** Agilyx may identify the Customer as a customer in a press release, marketing materials, and on its website-using the Customer's name and logo.

16.2 **Force Majeure.** A party will not be liable to the other for any loss, damage, delay or breach in performing any obligations under this Agreement to the extent it results from any cause or event beyond the control of the party being released, including acts of God, acts of third parties, network outages, and acts or omissions of civil or military authorities.

16.3 **No waiver.** A provision of or a right under this Agreement may not be waived or varied except to the extent it is given in writing signed by the party giving the waiver.

16.4 **Severability.** If any provision of this Agreement is found invalid or unenforceable pursuant to a judicial decision, the remainder of this Agreement will remain valid and enforceable according to its terms.

16.5 **Assignment.** Agilyx reserves the right to assign or sub-contract any or all of our rights and obligations under this Agreement. You may not assign or subcontract this Agreement or any rights under it without our prior written approval.

16.6 **Amendments.** No amendment of this Agreement will be binding unless executed in writing by a duly authorized representative of each party to this Agreement.

16.7 **Priority.** No provision of any purchase order, supplement or other business form employed by the Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for

administrative purposes only and will have no legal effect.

16.8 **Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of, and subject to the non-exclusive jurisdiction of, New South Wales, Australia.

16.9 **Notice.** Notices must be in writing and sent to the address shown on the first page of this Agreement by certified mail, nationally recognized overnight courier service, or by email if it includes an electronic copy of a letter executed by a duly authorized representative of the corporation.

16.10 **Privity.** This Agreement does not and is not intended to confer any rights or remedies to any third parties.

16.11 **Electronic Signatures; Counterparts.** This Agreement may be executed by electronic signature and in counterparts, which, when taken together, will be deemed to constitute one and the same original Agreement.

16.12 **Entire Agreement.** This Agreement (together with the relevant Order Forms and Statement of Work) contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior arrangements and representations relating thereto.