

# SERVICE SCHEDULE

## AGILITY CLOUD SERVICE

This Service Schedule (the “**Schedule**”), between Agility Network Technologies, LLC (“**Provider**”) and You, the organization purchasing the Performance Cloud Platform and the Cloud Server(s) (“**Service**”), as identified as part of the subscription process for the Service (“**You**” or “**Your**”), is effective immediately and is issued pursuant to and incorporates by reference the terms and conditions of the Master Service Agreement (“**MSA**”) by and between Provider and You.

This Schedule includes the terms and conditions governing the Service provided to You under the Agreement. By accepting this Schedule between You and Provider - by checking the "I have read and accept the Terms and Conditions" box when completing the Account creation, by logging in on Provider administrative web Portal, or by placing an order for any of the Service, You agree to be bound by all of the terms and conditions set out in this Schedule. All capitalized terms in this Schedule shall have the same meaning as set forth in the MSA, unless defined herein. In the event of a conflict or inconsistency between the terms of the MSA and the terms of this Schedule, this Schedule shall supersede and govern.

**1. Definitions.** For the purposes of this Schedule, the following definition(s) apply:

“**Cloud Server**” means a virtual machine instance that runs its own operating system and sets of dedicated resources.

“**Performance Cloud Platform**” means the application service used to manage Your Cloud Server(s).

“**Service**” means the Performance Cloud Platform and Cloud Servers.

“**Performance Cloud VMware**” means the Service powered by VMware.

**2. Service**

**2.1. Subscription.** During the Term, You may access and use the Service. Provider or its Third-Party Supplier retains all right, title, and interest in and to the Service, including without limitation all computers, other hardware, and software incorporated into or used by the Service, and this Agreement does not grant You any intellectual property rights in the Service or any of its components.

**2.2. Storage Capacity; Data Transfer; Server Resources.** Your Account is allocated CPU, RAM, storage and backup resources according to your selected Service Plan and add-ons. You can increase or decrease the amount of resources in your Service plan by selecting a different plan or add-ons in the Portal. Changes to the selected plans are prorated during the Billing Cycle. The Service may stop accepting, processing, or delivering data when the purchased limit is reached thus causing server unavailability or data loss. Provider shall not be held responsible for such unavailability or data losses. Your Cloud Servers are configured in such a way so the accounts are separated from each other to the maximum possible degree even if they share the same resource pool. However, Provider cannot be held responsible for any breach of security or data leak due to the shared environment.

**2.3. Backup.** Provider recognizes that from time to time, Your End-Users or Administrative Users may mistakenly delete, in whole or in part, items in Your database, mailbox or public folders, as applicable. As this is not a system fault and restoration may require partial implementation of Provider’s disaster recovery procedures, Provider reserves the right to charge you, and you agree to pay for, restoration fees of 500\$ USD per backup, plus taxes. Provider does not warrant the integrity of the content or mailbox or databases content, as applicable, of each individual backup.

**2.4. Acceptable Use.** Provider reserves the right to intervene on any Cloud Server if its behavior is affecting negatively the normal operations of Provider’s infrastructure, any other client’s Cloud Server or Provider’s reputation on other network or server. This intervention includes the suspension of Your Service in whole or in part. Provider will contact You as soon as reasonably possible regarding any issues related to this policy.

**3. Performance Cloud VMware.**

**3.1. Performance Cloud powered by VMware.** If You subscribe to Performance Cloud VMware, this Section 3 applies.

3.2. **Backup Integrity.** The Service includes tools to assist You in conducting individual backups. Notwithstanding the foregoing, You remain fully responsible for ensuring the integrity of each individual backup conducted with the Service.

3.3. **Fixed-Term Subscription.** Fixed-Term Subscriptions for Performance Cloud VMware are subject to the following terms and conditions:

3.3.1. **Description.** If You subscribe to a Fixed-Term Subscription for Performance Cloud VMware, You commit to a specific Subscription Plan, which includes a defined number of CPU, memory, storage, backup, or other resources, for a fixed-term of twelve (12) months or thirty-six (36) months (the “**Initial Subscription Term**”), in exchange for a discount applied on the resources You use during the Initial Subscription Term.

3.3.2. **Payment and Term.** Fixed-Term Subscriptions for Performance Cloud VMware are invoiced and must be paid monthly. Fixed-Term Subscriptions for Performance Cloud VMware do not automatically renew. At the end of the Initial Subscription Term, unless otherwise agreed between the Parties, the Service will be invoiced as a Monthly Subscription at Agility’s standard rate.

3.3.3. **Cancellation or Change of Subscription Plan.** If You cancel a Fixed-Term Subscription for Performance Cloud VMware prior to the end of the Initial Subscription Term, You must pay Provider a termination fee equivalent to twelve percent (12%) of the total value of the engagement, calculated at retail list price (before discount), payable upon cancellation. Notwithstanding the foregoing, You may downgrade Your Fixed-Term Subscription for a lower commitment without any termination fee; provided, however that in such case, Your new Subscription Plan will be subject to a new Initial Subscription Term beginning upon the effective date of the new Subscription Plan.

#### 4. **PCI-DSS Compliance Optional Services.**

4.1. **PCI-DSS Compliance Services.** If PCI-DSS compliance services are provided as part of the Service, this Section 4 applies.

4.2. **Responsibility.** Provider PCI-DSS v3.1 attestation of compliance (AoC) status does not automatically translate to PCI-DSS compliance for the services that You host on the Cloud Server. You are solely responsible for Your own PCI-DSS certifications. Provider may provide You with consulting services to help You configure and maintain Your services to meet PCI-DSS compliance requirements and agrees to follow Your processes and requirements. These services include but, are not limited to, backups, audit log collection & analysis, managed security patching, firewall based intrusion detection system (IDS), anti-virus, and Windows PCI-DSS security template; for any services outside the list of the Infrastructure PCI-DSS scope, Provider will follow any reasonable customer processes requirements, provided that Provider is, in its own opinion, able to provide such services.

4.3. **Limitation of Liability and Disclaimer.** Provider makes no representation or warranty whatsoever regarding any of the services provided herein for PCI-DSS Compliance and you agree that Provider shall not be liable to you for any loss or damage arising from the provision of the PCI-DSS compliance services, other than the rights and remedies that You may have under law for gross negligence or wilful misconduct. PROVIDER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE ABILITY OF THE SERVICES YOU HOST ON THE CLOUD SERVERS TO BE COMPLIANT WITH PCI-DSS NOR TO ACHIEVE ANY CERTIFICATION THEREOF. FURTHERMORE, YOU ARE RESPONSIBLE FOR THE SECURITY OF CARDHOLDER DATA provider POSSESSES OR OTHERWISE STORES, PROCESSES, OR TRANSMITS ON YOUR BEHALF, OR TO THE EXTENT THAT THEY COULD IMPACT THE SECURITY OF YOUR CARDHOLDER DATA ENVIRONMENT.

#### 5. **Service Availability Warranty.**

5.1. **Service Availability.** Provider covenants to a 99.999% Service Availability for the Service. For the purpose of this Schedule, “**Service Availability**” means the ability for an End-User, within an organization, to attempt access to a Cloud Server either through the Internet or directly from the Performance Cloud Platform.

5.2. **Service Credit.** Any Service Credit request shall, in addition the information set forth in the MSA, indicate the Cloud Server(s) affected by the Service Outage. Any Service Credit shall be calculated based only on the Cloud Server affected by the Service Outage.