



End User License Agreement

Last updated: 1 February 2020

This document contains the terms and conditions on which we grant you the limited right to access and use our Software at the request of our Customer. You should proceed to access and use our Software only if you agree with all the terms and conditions set out in this document.

These terms were last updated on 16 September 2019.

1. Agreement

- 1.1 Your Access is provided under the terms of the SaaS Agreement between Us and Our Customer.
- 1.2 When You click "Login" during the login to use our Software on Our Website an agreement is made between:
 - (a) Us; and
 - (b) the person who clicks "Login"; and
 - (c) if that person is an employee acting in the course of his/her employment, the employer of that person in addition to that person; and
 - (d) if that person is acting as agent for another person, the principal of the agent and the agent jointly.
- 1.3 If the person who clicks "Login" is acting in the course of their employment or as agent, then that person is deemed to have warranted and represented to Us that s/he has authority to act on behalf of his/her employer or principal, to enter into this Agreement.
- 1.4 To the extent the terms of this Agreement and the SaaS Agreement are in conflict, the terms of the SaaS Agreement take precedence over the terms of the EULA to the extent of any inconsistency.
- 1.5 Your use of the Software that exceeds a fair use amount, or the amount as agreed under the SaaS Agreement with our Customer or that otherwise constitutes unfair usage, determined at our absolute discretion as updated from time to time, may be subject to additional Fees payable by Our Customer on Your behalf.

2. Accessing and Using Ailytic

- 2.1 We grant to You a non-exclusive, non-transferable, limited right to Access the Software to receive the features and benefits of the Software for the purpose of processing Your own internal data in a production environment, subject to any other limitations of use and only for the Term as defined in the SaaS Agreement between Us and our Customer.
- 2.2 You agree not to hold Us liable for any damages or claims which arise from any interruption or errors in the Software or any loss of Customer Data howsoever arising.
- 2.3 We may change the features, benefits or service items of any Software from time to time in Our discretion.
- 2.4 You acknowledge and agree that You:
 - (a) are solely responsible for the creation, posting, updating and maintenance of any Customer Data;
 - (b) must manage, renew, create, delete, edit, maintain and otherwise control the editorial content of any Customer Data.

2.5 Except as explicitly stated in a separate Master Services Agreement or similar direct software supply agreement, we are not responsible for any delays, delivery failures or any other loss of damage resulting from the transfer of data over communications networks (other than the Network) or facilities, including the internet, and You acknowledge and agree that the Software may be subject to limitations, delays or other problems inherent in the use of such communications.

2.6 You may notify Us of any defect that You believe is in the Software using the process set out either on our website (www.ailytic.com) and/or via the mechanism in a separate services agreement, or using the email address support@ailytic.com and We will use reasonable efforts to remedy any material defects in the Software in a timely manner subject always to our obligations at law and any additional Software Support Agreement.

2.7 We may implement any new version of the Software from time to time at Our absolute discretion, and without liability or prior notice to You. New versions of the Software may add or remove features, correct defects, maintain or vary the Hosted Environment or Network or update or vary material that supports the Software.

2.8 We do not guarantee that any change, maintenance, addition, deletion, error correction, patch, update or new version of the Software (or any part of it) will be compatible with any of Your data, applications, other software or interfaces that connect to or interface with the Software.

3. Confidential Information and Privacy

User and personal information

- 3.1 You must not disclose Your password to any other person.
- 3.2 In the case that you administer access to the Software, you must ensure that each person who is issued with a password to access the Software does not disclose their password to any other person.
- 3.3 We will not use, nor will we permit others to use, individual User data for purposes other than for the use of the Software, including selling User data or marketing to Users.
- 3.4 You must not enter confidential information of persons other than yourself or those you are legally allowed to represent into the Software.
- 3.5 Personal information about You is stored in the Software, which will include Your name, and email address, and possibly other information the Customer has determine as necessary for its functions and activities.
- 3.6 You acknowledge that:
 - (a) information related to You will be visible to other Users in accordance with the permissions the Customer is able to set within the Software;
 - (b) some of Your information essential for the effective use of the Software such as email cannot be hidden and will be visible to all Users.
- 3.7 You may inspect and amend Your personal information through the Software's self-service features.
- 3.8 Requests related to Your personal information may be made to Us

through Our help pages (<https://www.help.ailytic.com>), email (support@ailytic.com) or via direct phone call to +61 8 8120 3004.

Confidentiality

- 3.9 All Customer Data entered into the Software, and information about other Users (including class/qualification, working hours and commercial arrangements), is Confidential Information, unless it:
- (a) becomes known to the Recipient without restriction, from a third party who, to the Recipient's knowledge, was not bound by a confidentiality agreement with the Discloser, or otherwise prohibited from disclosing the information to the Recipient, or had the right to disclose it;
 - (b) was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;
 - (c) was lawfully in the possession of the Recipient before the information was disclosed to it by the Discloser;
 - (d) is or becomes in the public domain through no act or omission of the Recipient;

- 3.10 A Recipient may not disclose any Confidential Information to any third party without obtaining the Discloser's prior written consent.

Privacy

- 3.11 Each party must comply with the requirements of the any Privacy Law in the country in which the party (and/or the individual about whom the Personal Information relates) is located, and in any country to which the Personal Information is to be sent.

- 3.12 Our Customer has warranted to Us that it has obtained consent in accordance with its own valid legal requirement from each individual about whom We will obtain Personal Information in connection with this Agreement for Us, Our Representatives and their permitted successors, assignees and sub-licensees to use that individual's Personal Information in any manner that may be reasonably contemplated by this Agreement and/or as stated in Our privacy policy (as available on Our Website), including a transfer overseas to the countries stated in the privacy policy.

- 3.13 You acknowledge that the Software may store some information, including Your Personal Information, overseas in accordance with the allowed provisions of the Australian Privacy Principles.

- 3.14 Our Software may include features enabling you to receive notifications of events, such as shift availability, required work operations/tasks, via smartphone notification and Short Messaging Service notification. If you elect to receive notifications you will be deemed to have consented to receive such notifications, including commercial electronic messages for the purposes of the *SPAM Act 2003 (Cth)*, as we feel may interest you or be relevant to your usage of the Software. Those notifications may generate information within the Software relating to your profile, including where you respond to a notification.

4. Restrictions of Usage

- 4.1 You must not:

- (a) copy, adapt, translate, publish, communicate to the public, or create any derivative work or translation of the Software, unless expressly permitted by law or the SaaS Agreement;
- (b) process the data of any third party as part of any time sharing, outsourced service, shared service or other service that uses any of the Software for the benefit of any other person;
- (c) sub-license, lease, rent, loan, assign, novate or otherwise transfer any part of the Software or Software or the benefit or burden of this Agreement in whole or in part to any third party other than as provided for in this Agreement;
- (d) reverse engineer, reverse compile, de-compile or disassemble the object code of the Software or any part of the Software, or otherwise attempt to derive the source code of the Software, except to the extent the permitted by law;
- (e) remove, alter or obscure any of Our Marks, or any proprietary or restricted use notice on the Software;
- (f) use the Software for the purpose of building a competitive product or copying the features or user interface of the Software;
- (g) attempt to download or Access the object code or source code of the Software;

- (h) use the Software to communicate, display, store, process or otherwise use any data (in any format, and whether readable by humans or by machines, and including data that is Customer Data) that, in Our opinion:
 - (i) infringes any person's Intellectual Property Rights, right to privacy, right to keep confidential information confidential, right to publicity or induces any person to breach a contract;
 - (ii) is unlawful, discriminatory, derogatory, defamatory, slanderous, malicious or obscene;
 - (iii) contains any virus or other malicious code, or is used to gain unauthorised access to, does harm to, wrongfully intercepts, expropriates, accesses or uses for any wrongful purpose, any person's hardware, software, network or data;
 - (iv) wrongly identifies, or disguises, the sender or place of origin of any communication;
 - (v) contains links to any other website that contains information that is of a type described in this clause (i); or
 - (vi) exceeds "fair use" by using a disproportionate or in appropriate amount of the infrastructure or resources that are used to operate the Software;

- (i) access, monitor or copy any content of the Software using any robot, spider, scraper or automated process or manual process, or deep link or any part of Our Software;
- (j) bypass or circumvent, or attempt to bypass or circumvent any measure that is designed to limit access to any part of the Software, including any Software Management Functionality;
- (k) frame, mirror or otherwise include any part of the Software in any other website or application;
- (l) use the Software in any way that could endanger, disable, impair or compromise Our systems or security, or interfere without other users;
- (m) allow any part of the Software to become the subject of any charge, lien, encumbrance or security interest; or
- (n) deal with any or all of Your rights and obligations under this Agreement.

- 4.2 You acknowledge and agree that:

- (a) the Software may include comprehensive audit and verification features, which track and record individual's use of the Software in detail;
- (b) We may inspect the usage logs, audit and verification features in the Software for the purposes of ensuring that You are complying with the terms of this Agreement;
- (c) we may share any such data with our Customer; and
- (d) We may delete the relevant Customer Data and/or suspend or prevent Access to the Software if:
 - (i) You breach the provisions of clause 3.1 (h) or the law; or
 - (ii) We act in good faith to comply with Our understanding of the law as it relates to requiring Us to delete or not display or publish certain data.

5. Trademarks

- 5.1 You acknowledge and agree that We are the owner and/or licensor of Our Marks and that all goodwill arising out of Your use of Our Marks under this Agreement shall inure to Us. You will not acquire any right to, or interest in, any of Our Marks. You must not at any time or in any way indicate Your ownership of, or any right in, Our Marks and You must not contest the right of Us or any of Our Affiliates to the use of any of Our Marks.

6. Proprietary Rights

- 6.1 Our Customer owns all Customer Data which You enter into the Software.

- 6.2 All Intellectual Property Rights that are created by any person (including You) that are adaptations, improvements, translations and derivative works in the Software are and shall remain the exclusive property of Us (and Our licensors, if any) or shall vest in or be transferred to Us

- immediately upon creation, as the case may be. This applies whether or not any adaptation, improvement, translation or derivative work was suggested or developed by You.
- 6.3 Except for the rights expressly granted by Us to You under this Agreement:
- We and Our licensors, if any, reserve all right, title and interest in or to the Software and all Intellectual Property Rights in them; and
 - no right, title or ownership interest in or to the Software whether by implication, estoppel or otherwise, is granted, assigned or transferred to You under or in connection with this Agreement.
- 6.4 You acknowledge and agree that the unauthorised disclosure, use or copying of the Software may cause Us serious financial loss that may not be adequately compensated by monetary damages. Accordingly, in the event of any unauthorised disclosure, use or copying of the Software, You agree that We shall have the right to obtain injunctive relief to stop such unauthorised disclosure, use or copying.
- 6.5 If You provide Us with any feedback, comments or suggestions relating to the Our products or Software, You grant Us an irrevocable, non-cancellable, worldwide, royalty-free, license to use, copy, adapt, translate, create derivative works from, sub-license or otherwise exploit in any way (including without hindrance, restriction or subject to any exercise of any person's moral rights) that feedback for any purpose, including to assist Us to develop or improve current or future products or services.
- ## 7. Limitation of Liability
- 7.1 Subject to law, you acknowledge and agree that owing to the nature of the Software We do not represent or warrant that:
- the Software will meet Your particular needs or purposes;
 - the Software will be fit for any particular purpose or be of merchantable quality;
 - Access to the Software will be continuously available; or
 - the Software will be error free.
- 7.2 By entry into this Agreement you indemnify Us, Our Affiliates and all our respective contractors against any loss, damage or expense (including lawyers' fees on the indemnity basis) suffered or incurred by any of them arising out of or about any breach of by You of this End User Licence Agreement and/or the SaaS Agreement with the Customer, except to the extent that the loss, damage or expense was directly caused by our breach of contract or negligence.
- 7.3 We are not liable to You as a user in respect of the Software, under the SaaS Agreement or this End User Licence Agreement or at law and You acknowledge and agree that the Customer is the sole customer of Us and any rights You may have at law or under this Agreement, are exercisable solely by the Customer and not by You. For the avoidance of doubt, to the extent permitted by law, You are not our customer nor are you a consumer within the meaning of the *Competition and Consumer Act 2010 (Cth)* (**Australian Consumer Law**).
- 7.4 Our Software come with guarantees that may not be excluded under the Australian Consumer Law. You may be entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Software repaired or replaced if the Software fail to be of acceptable quality and the failure does not amount to a major failure.
- ## 8. Termination
- 8.1 We may immediately terminate this Agreement and/or suspend Access to the Software if You:
- breach any of the provisions of clauses 1 (Agreement), 2 (Accessing and Using Ailytic), 3 (Restrictions of Usage), 4 (Trade Marks), 5 (Proprietary Rights), 6 (Confidential Information and Privacy), 9.5 (Compliance with Laws) and 9.6 (Assignment); or
 - You breach any other provision of the Agreement and You do not remedy it within fourteen 14 days of Us providing You written notice of the breach.
- 8.2 If the Master Services Agreement, SaaS Agreement or this Agreement terminates any right to Access and use the Software terminates immediately.

- 8.3 Unless agreed via a Master Agreement and/or Data Retention Policy terms You are solely responsible for ensuring that You have extracted or replicated any of Your information, including Customer Data that is in the Software prior to the end of the Term or when you cease using the Software. Ailytic can facilitate data extracts upon request. We may, but are under no obligation to, delete all Your information, including Customer Data that is in the Software at any time after the end of the Term.
- 8.4 Any termination of this Agreement shall not prejudice, limit or restrict any other rights or remedies any party may have arising prior to such termination.

9. General

Security Breaches

- 9.1 If you become aware that your User Account has been the subject of unauthorized access or has been compromised in any way, including as a result of your own computer systems being compromised, or by someone else being made aware of your credentials to access your User Account, you must immediately:
- Change your password; and
 - Inform our Customer in writing of the situation; and
 - Inform us in writing of the situation.

Notices

- 9.2 Any notice that is given under this Agreement:
- by Us, may be:
 - emailed to You at any email address provided by You or sent to Our Customer on your behalf; or
 - posted using pre-paid post to You at any address that You have provided We for sending any invoice or Your registered office or sent to Our Customer on your behalf; or
 - posted on our Website.
 - by You, must be posted to Us via Our Customer at the address stated on the Our Website as Our head office and addressed to the Chief Executive Officer.
- 9.3 A notice is deemed to be received:
- when posted with pre-paid post within the same country, within three 3 business days of the date when it was posted;
 - when posted with pre-paid post internationally, within 7 business days of the date when it was posted;
 - when emailed, within 1 business day of the time that the email was sent, provided no notice of failure has been received by the sender within that business day; or
 - within 10 days of being posted on the Website. You are responsible for ensuring that You check Our Website regularly to see any notice that is posted there.

Relationship of Parties

- 9.4 Nothing in this Agreement shall be deemed to create an employment, association, partnership, fiduciary or joint venture relationship between Us and You, appoint any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party. Except as expressly stated in this Agreement, neither party is authorised to act as the legal agent of the other.

Compliance with Laws

- 9.5 You must comply with all laws which are relevant to You performing its obligations under this Agreement.

Assignment

- 9.6 You must not assign or transfer this Agreement or any rights or obligations under this Agreement, in whole or part, without Our prior written consent, which we may grant or withhold at our absolute discretion. We may assign or transfer this Agreement, in whole or part, without Your consent. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Notwithstanding clause 6, We may disclose any of Your Confidential Information or Personal Information which is reasonably necessary to affect any assignment or transfer.

Waiver

- 9.7 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

Severability

- 9.8 If any part of this Agreement is determined to be invalid, illegal or unenforceable by any court or competent authority, such part will be severed from the remainder of the Agreement and the remaining provisions will continue in force.

Force Majeure

- 9.9 We shall not be in breach of this Agreement nor liable to You for any failure or delay in performance caused by events beyond Our reasonable control.

Agreement

- 9.10 We may vary the terms of this document from time to time and you should ensure that you read the document when you login to use the Software. This document will indicate the date the document was last updated.
- 9.11 The parties are entitled to rely on any notice or communication in electronic format, including any facsimile or email, that on its face appears authentic, and that has the purported author's name on it to the same extent as if it were a document written by the author. The parties consent to this Agreement being signed or varied through electronic communication.
- 9.12 To the extent permitted by law this Agreement constitutes the entire agreement between the parties regarding the subject matter and supersedes all prior or contemporaneous agreements, arrangements, understandings and communications, whether written or oral, save where this agreement binds the Customer and the Customer is a party to a SaaS Agreement under which access to the Software is provided to employees or contractors of the Customer, in which case the SaaS Agreement takes precedence over this Agreement to the extent of any inconsistency.

Governing Law

- 9.13 This Agreement will be governed by the laws of South Australia, Australia.

10. Definitions

In this Agreement the following capitalised words have the following meaning given to them, unless the context requires otherwise.

- 10.1 **Access** means obtaining access to the Software via the internet.
- 10.2 **Agreement** means the agreement recorded in this document.
- 10.3 **Affiliate** means any entity that is under the effective control of the relevant party.
- 10.4 **Australian Consumer Law** means the *Competition and Consumer Act 2010* (Cth).
- 10.5 **Availability** (and **Available**) means any period when the Hosted Environment on which the Software is running and the Network are operating in accordance with the manufacturer's or supplier's documentation.
- 10.6 **Confidential Information** means any non-trivial information however recorded, preserved, disclosed or communicated (whether directly, indirectly, orally or by writing) in connection with this Agreement which is identified as confidential or which is or ought to have been understood by the parties, using reasonable business judgment, to be confidential.
- 10.7 **Customer** means the entity with whom we have entered into a Master Services Agreement, SaaS Agreement under which you have been provided with Access to the Software.
- 10.8 **Customer Data** means any software, materials, code, data, text (whether or not perceptible by users), metatags, multimedia information (including sound, data, audio, video, graphics, photographs, or artwork), e-mail, chat room content, bulletin board postings, or any other items or materials that are provided by or otherwise permitted by, You to be entered in, or processed by, the Software and including information entered or downloaded by You, your employees, contractors or Users.

- 10.9 **Discloser** means the party that makes a disclosure of Confidential Information.

- 10.10 **Hosted Environment** means the server and/or processing capacity operating system software, database and other equipment provided as part of the Hosted Environment, (whether using shared, virtual or dedicated software and/or equipment) on which the Software operates.

- 10.11 **Intellectual Property Rights** means copyright, moral rights, trade mark, design rights, service marks, patent, semiconductor or circuit layout rights, trade secrets, know-how, database rights or other rights in the nature of intellectual property rights (whether registered or unregistered), or any right to registration of such rights, existing in anywhere in the world, or protected by statute from time to time.

- 10.12 **Network** means the telecommunications network comprised of equipment, wiring and circuits within and between the network backbone nodes (points of presence) and the servers in the Hosted Environment. The term Network does not include any:

- (a) circuits to a backbone node, customer premises or any network or equipment not owned or controlled by Us; or
- (b) third party networks or equipment not owned or maintained by Us, including connections to peer networks and the internet.

- 10.13 **Our Marks** means all trademarks, service marks, logos or other words or symbols identifying the Software, Software, professional services or Our business.

- 10.14 **Personal Information** means any information or data that is subject to any Privacy Law.

- 10.15 **Privacy Law** means any law, regulation or common law which governs the use of information that is about, identifies or can be used to identify, any identifiable individual, or which is generally understood in the relevant jurisdiction to protect an individual's privacy and/or to govern the collection, use, disclosure or transmission of personal information or data.

- 10.16 **Recipient** means the party that receives a disclosure of Confidential Information.

- 10.17 **Representatives** means the employees, agents, contractors of a party, or those of any Affiliate, and the professional representatives of a party providing advice in relation to the Agreement, including the lawyers, bankers, auditors, accountants and insurers of a party.

- 10.18 **Scrape** and **Scraping** means the use of an automated software system, or manual process, to copy and/or download Customer Data from the Software and store same.

- 10.19 **Software** means:

- (a) any version of the Software that may be implemented by Us and related documentation, accessed from the Hosted Environment via the Network;
- (b) the provision of the website or application or platform through which You Access the Software via the internet;
- (c) any other feature, benefit or service item to which we provide you access in connection with the Software;
- (d) the object code version of Our software program that is part of the Software, and any update and new release that may be made available by Us in Our discretion from time to time.

- 10.20 **Master Services and/or SaaS Agreement** means the agreement between Us and our Customer under which you have been provided with a User Account.

- 10.21 **Term** means the period during which we are required to provide you with Access to the Software under a SaaS Agreement with our Customer.

- 10.22 **User Account** means a profile in our Software created for You and using Your information including a username and password combination for You to Access the Software.

- 10.23 **You** (and other grammatical forms of You) means the person or entity referred to in clause 1.2(b).

- 10.24 **We, Us, Our** means Ailytic Holdings Pty Ltd ACN 613 182 184 or any other subsidiary owned by Ailytic Holdings Pty Ltd.

- 10.25 **Website** means Our website where you may access the Software, currently located at www.live.ailytic.com.