

## AGILE'S STANDARD PRODUCT WARRANTY FOR SMARTALOCK, FLOORSENSE AND FLOORSIGHT PRODUCTS

### Agile's Specification Warranty

1. Agile Workspace Limited, a New Zealand company with a company number of 5899397 and NZBN of 9429042216759 ("**Agile**") warrants that for the Warranty Period, each Product will operate substantially in accordance with the published Documentation for that Product, subject to the terms and conditions below. During the Warranty Period, if there is a Fault in a Product then, subject to the Customer's compliance with clauses 2 to 13 below, Agile will use commercially reasonable endeavours to:
  - (a) either rectify the Fault or provide a replacement of the relevant Product or defective part of the Product ("**Agile's Specification Warranty**") without additional charge to the Customer; and
  - (b) do so within the timeframes set out in the Support Response Matrix (subject to clause 5 below).

### Fault Support Requests to Distributor

2. To claim under Agile's Specification Warranty, the Customer must notify the Distributor of such a Fault during the Support Hours and using the contact method specified in the Support Response Matrix. Agile has appointed the Distributor as its agent to be the first point of contact for the Customer for support of the Product. Where Fault support requests are made outside this time window, the Distributor will respond in the next following Support Hours time window.
3. When making Fault support requests, the Customer must nominate a single Customer contact person who:
  - (a) will provide the Distributor with a documented example of the Fault and as much information about the Fault or suspected Fault as is practicable;
  - (b) has been trained in the use of the Product and System;
  - (c) is on-site at the Installation Location and is able to:
    - (i) check the status of the pucks, sensors, meeting room tablets and kiosk screens, and relay that information to the support technicians;
    - (ii) follow instructions from support technicians on how to interact with the kiosk, Smartalock App and Floorsense App in order to more efficiently resolve any issue; and
    - (iii) provide physical access to the Product and all locks, kiosks, controller boxes, pucks, sensors, meeting room tablets and other parts of the System,and has the authority of the Customer to co-operate with the support technicians on the Customer's behalf, including to manage the support request, obtain any internal authorisations within the Customer to access the Product and all other parts of the System, and sign-off on Fault resolution.

### Defined Response and Resolution Targets based on Severity

4. In accordance with clauses 5 to 13 below, Agile (and the Distributor as Agile's agent) will, throughout the Warranty Period, provide to the Customer the following standard support during the Support Hours for the Products at the Installation Location:
  - (a) response to Fault support requests based on Fault Severity in accordance with the Support Response Matrix;
  - (b) resolution of Faults based on Fault Severity in accordance with the Support Response Matrix;
  - (c) remote support to the Customer by telephone, instant messenger or email to resolve any Fault in Products; and
  - (d) physical replacement or repair of any Faulty Product, subject to the exclusions in clause 6 ("**Standard Support Service**").
5. The response times and resolution times in the Support Response Matrix are targets only, and any failure to meet these times will not give rise to any liability on the part of, or imposed any penalty on, Agile or the Distributor. Without limitation, the ability of Agile and the Distributor to resolve any Fault within any resolution time is dependent on the Customer ensuring that its internet, LAN and (if applicable) single sign-on infrastructure is fully accessible, operational and functional. To avoid doubt, the Customer is responsible for ensuring that all Customer provided infrastructure shown in yellow in the relevant Service Responsibility Diagram is fully accessible, connected, operational and functional.

### Provision of Standard Support Service and Out of Scope Services

6. The Standard Support Service does not include responding to or resolving any:
  - (a) faults, problems, changes or outages in or to any IT, WIFI or other system or software that adversely affects the operation of the Product or the System, including reboots or changes to the Customer's LAN, other networks, upgrades to non-Smartalock, non-Floorsense or non-Floorsight software, telecommunications outages or changes to firewalls;

- (b) faults, problems, changes or outages caused or contributed to by factors outside of Agile's reasonable control, including power cuts, earthquakes, flooding, adverse weather conditions or any other Acts of God, or changes to premises, including moving desk locations or change of location of offices;
- (c) faults in non-Smartalock or non-Floorensse equipment, including the physical lockers in which the locks are installed (such as a door hinge fault), the physical desks in which the pucks, sensors or power control relays are installed (such as a faulty sit stand motor), faults in laptops, phones, other end-user devices, accessories, attachments, supplies, consumables or other items of the Customer not supplied by Agile;
- (d) support requests made by the Customer outside of the applicable Support Hours (that is, these will be addressed as part of the Support Services during the next Support Hour period);
- (e) support relating to any location that is not the Installation Location;
- (f) use or operation of any part of the Product not in accordance with, or contemplated by, the Documentation;
- (g) faults, problems, changes or outages caused or contributed to by improvements, modifications, additions, customisations, enhancements, developments, patches, releases, bug fixes or changes in or to any part of the Product, other than those made by Agile;
- (h) use or interoperation of the Product with any other computer programs or software not provided by or previously approved in writing by Agile;
- (i) faults, problems, changes or outages caused or contributed to by any negligent act or omission or wilful misconduct of, or breach of the terms of this Product Warranty by, the Customer or their personnel or any third party;
- (j) incorrect configuration or installation of the Product, except where such incorrect configuration or installation is caused by Agile or the Distributor; or
- (k) faults, problems, changes or outages caused or contributed to by any virus, worm, trojan horse, backdoor, time-lock or any other malicious or disabling code, unless introduced by Agile.

7. Where the Distributor or Agile responds to and works towards resolving any support request made by the Customer that is:
  - (a) caused, or contributed to, by any of the factors described in in clauses 5, 6 or 20; or
  - (b) for onsite technician attendance under clause 12(c),
 ("**Out of Scope Services**"), the Distributor or Agile will charge the Customer the Out of Scope Rate for all time spent by any Distributor or Agile technician on such support request or attending the Installation Location ("**Out of Scope Fees**"). Agile will not increase the Out of Scope Rate by more than 5% per annum.
8. Once the Distributor has received a Fault support request and been advised of the Customer's contact person, the Distributor will log the Fault within its support ticketing system and allocate that Fault a unique number or identifier.
9. The Customer acknowledges that Faults may be resolved by way of installation of a remote Software Update in accordance with clauses 11 and 12. Where Faults are resolved by Software Update, the Customer acknowledges that other parts of the System may also be updated or upgraded and that new or different features may be installed on its System at the same time (provided that no such new or different feature will materially adversely affect the existing functionality or performance of the System).
10. Where the Distributor has been unable to rectify the Fault after providing initial support to the Customer, the Customer may request the Distributor contact Agile to escalate the Fault and request escalated support. Agile will investigate the escalated Fault. Subject to clause 20, Agile will, upon verifying the existence of the Fault, use commercially reasonable endeavours to either rectify such Fault or provide a replacement of the relevant Product (or part or component of the Product), without additional charge to the Customer. The Distributor will install such replacements, also without additional charge to the Customer.

#### **Software Updates by Agile at no additional charge**

11. During the Warranty Period, Agile will make general Software Updates available to the Customer at no additional charge. Agile will notify the Customer of available Software Updates by email, and such email will include a link to software release notes that will describe the nature of the release, including any new features, changed features, bug fixes or security patches. Software release notes will also be published at <https://support.smartalock.com/support/home>.
12. Once the Customer has reviewed the software release notes, if the Customer wants to take the Software Update, it must contact the Distributor to arrange installation on its System. Installation of a Software Update will usually involve the following:

- (a) Agile's assessment of the suitability of the Customer's current System for the Software Update. Customers who have elected not to take prior Software Updates, have unstable internet connectivity or have older Systems may not be able to take the new Software Update. Agile will determine suitability in its reasonable discretion.
- (b) If the Customer's System is suitable, then Agile and the Customer will agree on an appropriate time for the installation of the Software Update. Software Updates will cause an outage to the Customer's System for approximately an hour, but up to 4 hours. During the outage, no lockers will be able to be booked or reliably used and the software components of the System will be unavailable. As a result, Software Updates are usually scheduled for a time outside of the Customer's business hours.
- (c) Agile will install Software Updates remotely and by an automated procedure. Neither Agile nor the Distributor will provide an onsite technician to the Installation Location for any Software Update. The Customer may request an onsite technician to be present as an Out of Scope Service and if one can reasonably be made available, the time spent by the technician will be charged to the Customer at the Out of Scope Rate.
- (d) The Customer must make available an onsite representative at the Installation Location to test the System immediately on completion of the Software Update to ensure and confirm full access and functionality to the Customer's System has been restored.
- (e) If full access and functionality has not been restored, then Agile will remotely perform an automated rollback of the Software Update to restore the System to its pre-installation state.
- (f) If the rollback is not successful, then the Customer should lodge a support request for the Fault in accordance with the process described in clauses 2 and 3 above, and Agile (and the Distributor as Agile's agent) will work to resolve the Fault in accordance with clauses 2 to 13.

#### **Claims under Agile's Specification Warranty**

- 13. To validly claim under Agile's Specification Warranty, the Customer must:
  - (a) review and follow the Smartalock, Floorsense and Floorsight self-help, troubleshooting and support Documentation published at before escalating a defect to Agile for escalated support;
  - (b) be responsible for any expenses or costs incurred in making the claim, including any costs associated with contacting the Distributor or Agile; and
  - (c) fully co-operate with the Distributor and Agile when they are investigating and rectifying reported Faults, including by allowing the Distributor and Agile access to relevant premises and systems to the extent required for that purpose.
- 14. Unless the Customer has entered into a separate enhanced support agreement directly with Agile, and subject to clause 28, the obligations under clauses 1, 4, 10 and 12(f) will be Agile's sole obligation, and the Customer's sole remedy, in the event of Fault, issue or problem with any Product or any failure of any of the Product to operate in accordance with the relevant specifications.
- 15. To the extent permitted by applicable law, Agile makes no warranty that the operation of any Product will be completely error-free or uninterrupted, and the Customer acknowledges and agrees that the existence of minor or cosmetic errors or interruptions will not constitute a breach of Agile's Specification Warranty.

#### **Fees for Out of Scope Services**

- 16. Where the Distributor or Agile provide any Out of Scope Services to the Customer, the Distributor or Agile will issue an invoice to the Customer for Out of Scope Fees at the end of the month in which the related Out of Scope Services were performed. The Customer will pay each invoice by the 20<sup>th</sup> day of the month following the date of the invoice.
- 17. Any Out of Scope Fees or other amounts due and payable by the Customer:
  - (a) will be paid in Australian dollars by electronic transfer to the credit of a bank account designated in writing by the Distributor or Agile (as applicable) ("**Owed Party**");
  - (b) are exclusive of any value added tax, sales taxes, GST, customs duties or any other governmental duties, levies or taxes which where applicable, will be payable by the Customer in addition;
  - (c) will be paid in full without deduction, withholding, counterclaim or set-off of any kind; and
  - (d) will be paid on the due date, failing which:
    - (i) the Owed Party may charge interest on any undisputed outstanding amount on a daily basis at the rate per annum that is equal to the current overdraft rate of the Owed Party's bankers plus 2%, from the due date until the date of actual payment; and
    - (ii) if the Owed Party incurs any costs or expenses by reason of the Customer's failure to pay any amount by the due date, the Customer will reimburse the Owed Party to whom payment is due for all costs and expenses that the Owed Party reasonably incurs in connection with any actions or proceedings for recovery of such amounts, including all reasonable accounting costs, attorney costs (on a solicitor and own client basis), court costs and debt collection costs.

### Agile's Infringement Warranty

18. Agile warrants to the Customer that to the best of its knowledge, the use of the Products by the Customer in accordance with the Documentation will not infringe the intellectual property rights of any third party. If there is a breach of such warranty, Agile will indemnify the Customer in accordance with clause 19 ("**Agile's Infringement Warranty**").
19. Subject to clauses 20 and 26 to 28, Agile will indemnify the Customer against any and all losses, costs, expenses, demands and liabilities incurred or suffered by the Customer arising directly from a breach of Agile's Infringement Warranty, provided that if the Customer wishes to be indemnified under this clause 19, it must:
  - (a) promptly notify Agile of any relevant claim or legal proceeding and make no admission or settlement without Agile's prior written consent;
  - (b) allow Agile to participate in and control any defence, compromise, settlement, resolution or disposition of such claim or proceeding and if Agile elects to conduct the defence of such claim or proceeding, the Customer must:
    - (i) provide Agile with reasonable assistance and information in conducting the defence of such claim or proceeding (including by ensuring the Customer's directors, employees, agents or sub-contractors give such advice, evidence or statements as Agile may reasonably request); and
    - (ii) give Agile the sole control of, and the complete authority to conduct, the defence of such claim or proceeding and to negotiate and settle such claim or proceeding, as Agile may determine in Agile's reasonable discretion; and
  - (c) allow Agile to either:
    - (i) modify or substitute the infringing part of the Product to avoid continuing infringement; or
    - (ii) obtain the authority to enable the Customer to continue to possess and use the relevant Product,  
at Agile's option and expense.

In conducting the defence of any claim or proceeding under clause 19(b), Agile will comply with the Legal Services Directions 2017 (Cth), in particular with the model litigant obligations in Appendix B of those Directions.
20. Subject to clause 28, Agile will not be liable for a breach of Agile's Specification Warranty or Agile's Infringement Warranty, and will not indemnify the Customer under clause 19, to the extent that any Fault or infringement, or suspected Fault or infringement is caused or contributed to by any:
  - (a) of the issues or matters referred to in clause 6(a) to (k);
  - (b) failure by the Customer to follow the Smartalock, Floorsense and Floorsight self-help, troubleshooting and support Documentation published at <https://support.smartalock.com/support/home>;
  - (c) any negligent or wilful and wrong act or omission of, or breach of this Product Warranty by, the Customer or their personnel or any third party; or
  - (d) Customer operator errors.

In addition, the Customer must use its reasonable efforts to mitigate any loss that it suffers and to which the indemnity under clause 19 applies.

### Additional guarantees under consumer laws

21. The New Zealand *Consumer Guarantees Act 1993* as well as other laws in New Zealand (New Zealand "**Consumer Law**"), guarantee or imply certain conditions, warranties and undertakings, and give consumers other legal rights, in relation to the quality and fitness for purpose of certain products and services sold in New Zealand.
22. For products and services sold in New Zealand, if the customer is in trade and acquiring the Products, Documentation and associated services in trade, the customer agrees that the New Zealand *Consumer Guarantees Act 1993* and sections 9, 12A, 13 and 14(1) of the *Fair Trading Act 1986* will not apply, and that it is fair and reasonable that it is bound by the provisions of this clause.
23. Subject to clause 24:
  - (a) The *Competition and Consumer Act 2010* (Cth) as well as other laws in Australia provide certain guarantees that are available to consumers of certain products and services sold in Australia (Australian "**Consumer Law**") and Agile's goods and services sold in Australia come with guarantees that cannot be excluded under the Australian Consumer Law;
  - (b) For major failures with a service, the Customer is entitled:
    - (i) to cancel its service contract with Agile; and

- (ii) to a refund for the unused portion of the service, or to compensation for its reduced value;
  - (c) The Customer is also entitled to choose a refund or replacement for major failures with goods;
  - (d) If a failure with the goods or a service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time – and if this is not done, the Customer is entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion; and
  - (e) The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.
24. However, where goods or services are not of a kind ordinarily acquired for personal, domestic or household use:
- (a) liability under certain of these guarantees can be limited by contract; and
  - (b) these guarantee will not apply if the value of the relevant good or service exceeds AUD\$100K.
- The Customer acknowledges that the Products, Documentation and associated services are not of a kind ordinarily acquired for personal, domestic or household use. As a result, Agile limits its liability under these guarantees, if applicable and to the extent allowed by the applicable laws, as set out in clause 28 below.
25. The benefits given by Agile's Specification Warranty and Agile's Infringement Warranty are in addition to any other rights and remedies the customer may have under the Consumer Law applicable to the purchase of the Products, Documentation and associated services. Except as otherwise provided by Agile's Specification Warranty and Agile's Infringement Warranty above, all warranties, terms, conditions, guarantees or similar, other than those which cannot be excluded under applicable Consumer Law, are expressly excluded by Agile to the extent legally permitted.

#### **Agile's liability**

26. To the maximum extent permitted under applicable law, Agile is not responsible or liable (whether in contract, tort (including negligence), or otherwise) for any:
- (a) loss or corruption of any data or information;
  - (b) loss of revenue and/or profit, loss of anticipated savings, loss of goodwill or opportunity, loss of production, business interruption, or wasted management or staff time; or
  - (c) other loss, damage, cost or expense of any kind whatsoever, that is indirect, consequential, or of a special nature,
- arising directly or indirectly out of the Products, System or Documentation (and associated services provided by Agile and/or the Distributor), even if Agile had been advised of the possibility of such damages, and even if such loss, damage, cost or expense was reasonably foreseeable by Agile.
27. Subject to clauses 21 to 25 and 28, the maximum liability of Agile to the Customer arising out of the Specification Warranty and the Infringement Warranty, or relating to any Fault, the Products, the System or Documentation, will not exceed the lesser of:
- (a) the fees payable by the Customer to Agile and/or the Distributor for the Products and System; and
  - (b) NZD100,000.00 (or, with respect to the indemnity in clause 19, NZD500,000).
28. None of the exclusions or limitations in this Product Warranty will have the effect of limiting or excluding any liability to the extent such liability cannot be so limited or excluded by applicable law. If Agile cannot legally limit its liability as provided in clauses 25 to 27, then to the extent permitted by such applicable law, Agile limits its liability under the Specification Warranty, the Infringement Warranty and any other implied guarantee (such as those under the Consumer Law) that cannot be lawfully excluded, to:
- (a) in the case of the Products, Documentation and System:
    - (i) their replacement or repair; or
    - (ii) the supply of equivalent goods; or
    - (iii) payment of the cost of such replacement, repair or equivalent supply; and
  - (b) in the case of associated services (including the Standard Support Services) re-performance of those services or payment of the cost of such re-performance.

The choice of remedy in paragraph (a) and (b) above will be at Agile's election, except in the case of a major failure under the Australian Consumer Law, where the remedy will be at the Customer's option.

## General

29. This Product Warranty shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia. Agile and the Customer irrevocably agree that the courts of that State (and Australian Federal appeal courts) will have non-exclusive jurisdiction to hear and determine all disputes under or in relation to the Product or this Product Warranty. Agile and the Customer waive any objections to the State of New South Wales as the forum for proceedings on the grounds of forum non-conveniens or otherwise.
30. Agile may be contacted at:  
31 Boston Road, Grafton, Auckland 1023, New Zealand  
Phone: +64 9 2804521  
E-mail: support@floorsense.nz
31. Specifying anything in this Product Warranty after the words 'include', 'for example' or similar expressions does not limit what else is included.
32. In this Product Warranty, the following terms will have the following meanings:
- "Customer"** means the legal entity or person that purchased the Product for installation and use within premises owned, leased or controlled by that legal entity or person;
- "Distributor"** means Agile's authorised distributor, reseller or support provider from whom the Customer purchased the Product, or such other authorised support provider that Agile may appoint to replace them from time to time;
- "Documentation"** means the operating manuals, installation documentation, support documentation, user guides, specifications and other printed or electronic materials relating to the Products and either provided by Agile to the Customer through the Distributor or officially published by Agile for general availability to Customers;
- "Fault"** means any failure of a Product (or any part of it) to operate substantially in accordance with the Documentation, except any failure caused or contributed to by any of the issues or matters described in clauses 5, 6 or 20 of this Product Warranty;
- "Installation Location"** means the physical address and location where the Product was first installed and commissioned;
- "Local Business Days"** means Monday to Friday in the Installation Location, excluding any:
- (a) public holiday in the jurisdiction of the Installation Location;
  - (b) public holiday in Auckland, New Zealand; or
  - (c) time during the period on and from 23 December to 6 January in the following calendar year,
- and **"Business Day"** will be given the same meaning;
- "Out of Scope Rate"** means Agile's then current hourly rate for additional services as published on Agile's website from time to time;
- "Product"** means the:
- (a) "Smartalock" branded locks, kiosk, controller units, card reader units and associated software applications; and
  - (b) "Floorsense" or "Floorsight" branded pucks and occupancy sensors and associated software applications,
- designed and manufactured by Agile and purchased by the Customer from a Distributor;
- "Service Responsibility Diagram"** means the diagram attached to this Product Warranty dividing infrastructure responsibility between Agile/Distributor and the Customer;
- "Severity"** means in relation to a Fault, the level of impact of that Fault on the Customer's business operations, and will be categorised into one of the four categories in the "Severity" column on the Support Response Matrix;
- "Software Updates"** means any updates, upgrades, new versions, security patches and/or bug fixes to the Product or the System;
- "Support Hours"** means between the hours specified in the Support Response Matrix based on the severity of the Fault and applicable to the Installation Location of the Fault (being Australia or New Zealand) on Local Business Days;
- "Support Response Matrix"** means the table attached to this Product Warranty; and
- "System"** means:
- (a) the total number of Smartalock branded locks purchased by the Customer along with the Smartalock branded kiosks, slave controllers, master controllers, and associated software and apps used to operate that hardware;
  - (b) the total number of Floorsense or Floorsight branded pucks and occupancy sensors purchased by the Customer along with the Floorsense branded tablets, slave controllers, master controllers, and associated software and apps used to operate that hardware; and
  - (c) all associated cables, card readers, power relays, desk height controllers, iPads, and LAN switches also provided by Agile to form part of that system;

**“Warranty Period”** means in relation to a Product, the period of two years from the date that such Product was first commissioned at the Installation Location for the Customer and put into operational use.