

AGITAR SOFTWARE, INC.
SOFTWARE SUBSCRIPTION TERMS

This Agreement permits Customer to obtain a subscription to use Agitar software products pursuant to Agitar subscription order forms referencing this Agreement (“**Order Form(s)**”) and sets forth the basic terms and conditions under which those products and services will be delivered. This Agreement shall govern Customer’s initial purchase as well as any future purchases made by Customer which reference this Agreement.

These Subscription Terms, together with any and all Agitar order forms which reference these Subscription Terms executed by Agitar Software, Inc. (“**Agitar**”) and the Customer specified on those order forms (“**Customer**”) (collectively, the “**Agreement**”), is effective as of the date specified above (the “**Effective Date**”).

1. Subscription License.

1.1 Grant. Subject to all of the terms and conditions of this Agreement, Agitar grants to Customer a non-transferable, non-sublicensable, non-exclusive license to use the object code form of the software products specified in an Order Form (“**Software**”) internally, but only in accordance with (i) the technical specification documentation generally made available by Agitar to its customers with regard to the Software (“**Documentation**”), (ii) this Agreement and (iii) any term length, maximum number of authorized software classes, maximum number of authorized users, workgroup, project, CPU, computer or other limits set forth in the applicable Order Form. Licenses are effective only for the term specified on the Order Form (if not specified, the term is one year) and shall automatically renew for subsequent periods of one year at the then-current price unless either party provides the other with notice of cancellation 30 days or more prior to expiration of the then-current term. If not specified in an Order Form, the Software is licensed for use on one computer by one user. “**Software**” also includes any Documentation and any Support and Maintenance releases of the same Software product provided to Customer under this Agreement.

1.2 Installation and Copies. Customer may copy and install as many copies of the Software as is designated in the applicable Order Form for use at the location and by the personnel designated on the Order Form. Customer may also make a reasonable number of copies of the Software for back-up and archival purposes.

1.3 Use by Affiliates. Subject to the terms and conditions of this Agreement, Customer’s Affiliates may use the licenses granted to Customer, provided that (a) such use is only for Customer’s benefit, (b) Customer agrees to remain responsible for each such Affiliate’s compliance with the terms and conditions of this Agreement and (c) Customer provides Agitar advance written notice of each such Affiliate. Use of the Software by the Affiliates and Customer in the aggregate must be within the restrictions in the applicable Order Form. “**Affiliate**” means any entity under the control of Customer where “control” means ownership of or the right to control greater than 50% of the voting securities of such entity. The Affiliate rights granted in this section shall not extend to any “enterprise wide” licenses unless Affiliate usage is designated in the applicable Order Form.

1.4. Restrictions. Customer shall not (and shall not allow any third party to):

(a) decompile, disassemble, or otherwise reverse engineer the Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and then only with prior written notice to Agitar);

(b) distribute, sell, sublicense, rent, lease or use the Software (or any portion thereof) for time sharing, hosting, service provider or like purposes;

(c) remove any product identification, proprietary, copyright or other notices contained in the Software;

(d) modify any part of the Software, create a derivative work of any part of the Software, or incorporate the Software into or with other software, except to the extent expressly authorized in writing by Agitar; or

(e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software.

2. Ownership. Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Agitar and its suppliers have and will retain all rights, title and interest in and to the Software (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) and all copies, modifications and derivative works thereof. Customer acknowledges that it is obtaining only a limited license right to the Software and that, irrespective of any use of the words “purchase”, “sale” or like terms hereunder, no ownership rights are being conveyed to Customer under this Agreement or otherwise. Notwithstanding the foregoing, the Software permits Customer to generate JUnit tests, and Customer retains all rights, title and interest in and to such JUnit tests.

3. Payment. All payments shall be made in the currency specified in the Order Form within 30 days of invoice unless otherwise specified in the applicable Order Form. Fees for renewal terms may be invoiced 30 days prior to the commencement of the renewal term. Customer shall be responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on the net income of Agitar). Any late payments shall be subject to a service charge equal to 1.5% of the amount due per month or the maximum amount allowed by law, whichever is less.

4. Term of Agreement.

4.1 Term. This Agreement is effective as of the Effective Date and expires on the day that all license terms for Software has expired (the “**Term**”). Either party may terminate this Agreement (including all related Order Forms) if the other party: (a) fails to cure any material breach of this Agreement within 30 days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within 60 days thereafter). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

4.2 Termination. Upon any expiration or termination of this Agreement, Customer shall cease any and all use of any Software and destroy all copies thereof and so certify to Agitar in writing.

4.3 Survival. Sections 1.4 (Restrictions), 2 (Ownership), 3 (Payment), 4 (Term of Agreement), 5.3 (Disclaimer of Warranties), 7 (Limitation of Remedies and Damages), 9 (Confidential Information) and 10 (General) shall survive any

termination or expiration of this Agreement.

5. Limited Warranty and Disclaimer.

5.1 Limited Warranty. Agitar warrants to Customer that, the Software shall operate in substantial conformity with the Documentation. Agitar does not warrant that Customer's use of the Software will be uninterrupted or error-free or that any security mechanisms implemented by the Software will not have inherent limitations. Agitar's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty shall be, in Agitar's sole discretion, to use commercially reasonable efforts to provide Customer with an error-correction or work-around which corrects the reported non-conformity, or if Agitar determines such remedies to be impracticable within a reasonable period of time, to provide a refund of (a) the subscription fees paid for the Software which are allocable to the 30 day period prior to the date of the warranty claim (the "Warranty Period"), and (b) fees Customer has pre-paid for the portion of its subscription term which it has not yet received. Agitar shall have no obligation with respect to a warranty claim unless notified of such claim within the Warranty Period.

5.2 Exclusions. The above warranty shall not apply: (i) if the Software is used with hardware or software not specified in the Documentation; (ii) if any modifications are made to the Software by Customer or any third party; (iii) to defects in the Software due to accident, abuse or improper use by Customer; or (iv) items provided on a no charge or evaluation basis.

5.3 Disclaimer. THIS SECTION 5 IS A LIMITED WARRANTY AND EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5 THE SOFTWARE AND ALL SERVICES ARE PROVIDED "AS IS". NEITHER AGITAR NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD.

6. Support & Maintenance. Provided that Customer has paid the applicable subscription fee, Agitar shall provide the support and maintenance services set forth in Agitar's then-current Customer Support Service Plan ("**Support and Maintenance**").

7. Limitation of Remedies and Damages.

7.1 NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

7.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AGITAR'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO CUSTOMER SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO AGITAR UNDER THIS AGREEMENT.

7.3 THIS SECTION 7 SHALL NOT LIMIT CUSTOMER'S LIABILITY WITH RESPECT TO ANY CLAIM ARISING UNDER THE SECTIONS TITLED "GRANT," "RESTRICTIONS" OR "CONFIDENTIAL INFORMATION".

7.4 The parties agree that the limitations specified in this Section 7 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

8. Indemnification. Agitar shall indemnify and hold harmless Customer from and against any claim of infringement of a U.S. patent, U.S. copyright, or U.S. trademark asserted against Customer by a third party based upon Customer's use of the Software in accordance with the terms of this Agreement, provided that Agitar shall have received from Customer: (i) prompt notice of such claim (but in any event notice in sufficient time for Agitar to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation of Customer. If Customer's use of any of the Software is, or in Agitar's opinion is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Agitar may, in its sole discretion: (a) substitute for the Software substantially functionally similar programs and documentation; (b) procure for Customer the right to continue using the Software; or if (a) and (b) are commercially impracticable, (c) terminate the Agreement and refund to Customer the fees Customer has pre-paid for the portion of the subscription term following the effective date of termination. The foregoing indemnification obligation of Agitar shall not apply: (1) if the Software is modified by any party other than Agitar, but solely to the extent the alleged infringement is caused by such modification; (2) the Software is combined with other non-Agitar products or process not authorized by Agitar, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Software; (4) to any release of the Software other than the most current release; or (5) to any third-party code contained within the Software. THIS SECTION 8 SETS FORTH AGITAR'S AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

9. Confidential Information. Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("**Receiving Party**") from the disclosing party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, documentation or technical information provided by Agitar (or its agents), performance information relating to the Software, and the terms of this Agreement shall be deemed Confidential Information of Agitar without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of the Receiving Party who had no access to such information; or (v) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

10. General.

10.1 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party shall assign this Agreement (or any part thereof)

without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities (a "Change of Control"). Notwithstanding the foregoing, if any Order Form provides for unlimited use of the Software by Customer (an "Enterprise License"), then the number and scope of licenses available to Customer under the Enterprise License following the Change of Control shall be frozen at the number of users, CPUs, project, workgroup and other use metrics then used by Agitar for the Software, measured as of the close of the Change of Control. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 10.1 will be null and void.

10.2 Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

10.3 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to the subject matter hereof shall be the California state and United States federal courts located in San Francisco, California, and both parties hereby submit to the personal jurisdiction of such courts.

10.4 Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

10.5 Notices and Reports. Any notice or report hereunder shall be in writing to the notice address set forth above and shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered U.S. mail (return receipt requested); or (iii) one day after it is sent if by next day delivery by a major commercial delivery service.

10.6 Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

10.7 Entire Agreement. This Agreement and the documents referenced herein are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

10.8 Audit Rights. Upon Agitar's written request, Customer shall certify in a signed writing that Customer's use of the Software is in full compliance with the terms of this Agreement (including any copy, scope and user limitations). With prior reasonable notice of at least 15 days and not more than twice per year, Agitar may audit the copies of the Software in use by Customer provided such audit is during regular business hours. Customer is responsible for such audit costs only in the event the audit reveals that Customer's use is not in accordance with this Agreement.

10.9 Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

10.10 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.

10.11 Agitar Distributable Software. Agitar makes available certain software which it permits customers to distribute (including without limitation the Agitar JUnit Runner which is used to execute JUnit tests generated by the Software) ("**Agitar Distributable Software**"). Agitar Distributable Software will be clearly designated as distributable by Agitar and will be accompanied by an end-user license agreement permitting distribution (the "**EULA**"). Customer is entitled to the additional distribution rights to the extent permitted under the section of that EULA entitled "Limited Distribution License." Other than those distribution rights the Agitar Distributable Software is licensed under this Agreement as "Software." For the avoidance of doubt, Agitar's AgitarOne, Agitator, and Agitar Management Dashboard products shall under no circumstances be considered Agitar Distributable Software.

10.12 Government End Users. If the user or licensee of this commercial computer software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of this software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement and/or by the terms of this contract in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. This product was developed fully at private expense. All other use is prohibited.

10.13 Export Compliance. Customer acknowledges that the Software is subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Software or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Software is further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.