

## Evaluation Software License Agreement

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## 2.2 Support

Support provided for the Software by Agile 3 is described in the "Software Support" Attachment to this Agreement. Agile 3 will only provide Support for the then-current release of the Software. Fixes may require the installation of a later release of the Software as some problem fixes cannot be retrofitted into earlier releases of the Software.

## 3. Charges

There is no charge for the use of the Software for the duration of the evaluation period.

## 4. Limited Warranty

Agile 3 warrants that the Software was developed using commercially reasonable care and skill. The Software is provided "AS IS" AND, UNLESS PROHIBITED UNDER APPLICABLE LAWS OR EXPLICITLY STATED IN THIS SECTION, AGILE 3 AND ITS THIRD PARTY SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND DOES NOT INDEMNIFY AGAINST OR PROVIDE ANY REMEDY REGARDING THIRD PARTY INTELLECTUAL PROPERTY CLAIMS.

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## 5. Licensee Data and Databases

To assist Licensee in isolating the cause of a problem with the Software, Agile 3 may request that Licensee 1) allow Agile 3 to remotely access Licensee's system or 2) send Licensee information or system data to Agile 3. However, Agile 3 is not obligated to provide such assistance unless Agile 3 and Licensee enter a separate written agreement under which Agile 3 agrees to provide to Licensee that type of technical support. In any event, Agile 3 uses information about errors and problems to improve its products and services, and assist with its provision of related support offerings. For these purposes, Agile 3 may use Agile 3 entities and subcontractors (including in one or more countries other than the one in which Licensee is located), and Licensee authorizes Agile 3 to do so.

Licensee remains responsible for: 1) any data and the content of any database Licensee makes available to Agile 3, 2) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data (including any personally-identifiable data), and 3) backup and recovery of any database and any stored data. Licensee will not send or provide Agile 3 access to any personally-identifiable information, whether in data or any other form, and will be responsible for reasonable costs and other amounts that Agile 3 may incur relating to any such information mistakenly provided to Agile 3 or the loss or disclosure of such information by Agile 3, including those arising out of any third party claims.

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- d. **NOTWITHSTANDING THE SECOND PARAGRAPH OF SECTION 6.1, AGILE 3'S SUPPLIER, ORACLE AMERICA, INC., WILL NOT BE LIABLE FOR ANY DAMAGES ALLOWED UNDER SECTION 6.1.**

## 7. Compliance Verification

For purposes of this Section (“Compliance Verification”), “Evaluation Software Terms” means this Agreement and applicable amendments and transaction documents provided by Agile 3.

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Licensee agrees to create, retain, and provide to Agile 3 and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Licensee’s use of all Software is in compliance with the Evaluation Software Terms, including, without limitation, records of Transactions, and all of Agile 3’s applicable licensing and pricing qualification terms. Licensee is responsible for 1) ensuring that it does not exceed its Authorized Use, and 2) remaining in compliance with the Evaluation Software Terms.

Upon reasonable notice, Agile 3 may verify Licensee’s compliance with the Evaluation Software Terms at all sites and for all environments in which Licensee uses (for any purpose) Software subject to the Evaluation Software Terms. Such verification will be conducted in a manner that minimizes disruption to Licensee’s business, and may be conducted on Licensee’s premises, during normal business hours. Agile 3 may use an independent auditor to assist with such verification, provided Agile 3 has a written confidentiality agreement in place with such auditor.

### 7.2 Resolution

Agile 3 will notify Licensee in writing if any such verification indicates that Licensee has used any Software in excess of its Authorized Use or is otherwise not in compliance with the Evaluation Software Terms. Licensee agrees to promptly pay directly to Agile 3 the charges that Agile 3 specifies in an invoice for: 1) any such excess use, 2) support for such excess use for the lesser of the duration of such excess use or two (2) years, and 3) any additional charges and other liabilities determined as a result of such verification.

## 8. Third Party Notices

Software may include third party code that Agile 3, not the third party, licenses to Licensee under this Agreement. Notices, if any, for the third party code (“Third Party Notices”) are included for Licensee’s information only. These notices can be found in the Software’s NOTICES file(s). Information on how to obtain source code for certain third party code can be found in the Third Party Notices.

## 9. Open Source Software

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## 10. Prohibited Uses

Licensee may not use or authorize others to use the Software or any part of the Software, alone or in combination with other products, in support of any of the following High Risk Activities: design, construction, control, or maintenance of nuclear facilities, mass transit systems, air traffic control systems, weapons systems, or aircraft navigation or communications, or any other activity where software failure could give rise to a material threat of death or serious personal injury.

## 11. Confidentiality

The Software and any associated written materials provided under this Agreement is considered Agile 3 Confidential Information. Licensee agrees not to disclose the Software and any associated written materials to any third parties and agrees to use the same care and discretion to avoid disclosure of the Agile 3 Confidential Information as Licensee uses with Licensee’s own similar information that Licensee does not wish to disclose, but in no event will such degree of care be less than reasonable care. Licensee’s obligations with respect to the Agile 3 Confidential Information will continue for a period of two (2) years from Licensee’s receipt of the Agile 3 Confidential Information. Licensee agrees not to disclose to Agile 3 any information that is considered confidential or proprietary to Licensee or any third party except under a signed, separate, written confidentiality agreement.

**12. General**

- a. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- b. For Software Agile 3 provides to Licensee in tangible form, Agile 3 fulfills its shipping and delivery obligations upon the delivery of such Software to the Agile 3-designated carrier, unless otherwise agreed to in writing by Licensee and Agile 3.
- c. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.
- d. Agile 3 and its affiliates, and their subcontractors, may process and store business contact information of Licensee personnel in connection with the performance of this Agreement wherever they do business. Agile 3 may use personnel and resources in locations worldwide and third party suppliers to support the delivery of products and services.
- e. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.
- f. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation: 1) neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two (2) years after the cause of action arose; and 2) upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- g. Licensee may not assign this Agreement, in whole or in part, without the prior written consent of Agile 3. Assignment of Agile 3's rights to receive payments and assignment by Agile 3 in conjunction with the sale of the portion of Agile 3's business that includes the product or service, is not restricted.
- h. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control.
- i. No right or cause of action for any third party is created by this Agreement, nor is Agile 3 responsible for any third party claims against Licensee, except as permitted in the "Items for Which Agile 3 May Be Liable" section above for bodily injury (including death) or damage to real or tangible personal property for which Agile 3 is legally liable to that third party. Notwithstanding the language of this Section 12.i., Oracle America, Inc., is a third party beneficiary to this Agreement.

**13. Geographic Scope and Governing Law****13.1 Governing Law**

Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users.

To obtain the export classification of the Software, refer to: <https://www.ibm.com/products/exporting/>.

Both parties agree to the application of the laws of the State of New York to this Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if Agile 3 agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act applies to transactions under this Agreement.

This Agreement, including its applicable Attachments, is the complete agreement regarding the Software licenses between the parties, and supersedes any course of dealing, discussions, or representations between Licensee and Agile 3.

## Software Support Attachment

This Software Support Attachment describes the support for the Software Agile 3 will provide to Licensee. Unless otherwise specified, terms defined in the Agreement will apply to this Software Support Attachment.

### Technical Support

Technical support will be provided via email. Support personnel will be available from 8:00 a.m. to 8:00 p.m., Monday through Friday Eastern time zone, excluding U.S. national holidays. Agile 3 will provide contact information to submit a support request. Support will be provided in U.S. English only.

Agile 3 will use reasonable efforts to respond to each support request based upon the specified Response Time objectives. There are no service level agreements or any credits due to failure to meet a Response Time objective.

“Response Time” means the time elapsed between when a support request is received by Agile 3 and when Agile 3 responds to the Client acknowledging the issue, severity level, and assignment of support resources to begin resolution process. This does not include the time to analyze or provide a resolution to the issue.

Technical support will include the following:

- a. problem analysis;
- b. identification of suspected product/component defects and product-specific, task-oriented questions regarding the installation and operation of the currently supported Software;
- c. assistance with identifying suspected product/component defects and product-specific, task-oriented questions regarding the installation and operation of the currently supported Software;
- d. assistance with problem determination and resolution; and
- e. access to product defect corrections.

Fixes will be created and tested at the latest maintenance level of the Software. Fixes may require the installation of a later release of the Software as some problem fixes cannot be retrofitted into earlier releases of the Software.

Technical Support Severity Levels	Response Time Objective
Severity 1 Response Time objective (in business hours)	4 hours
Severity 2 Response Time objective (in business hours)	8 hours
Severity 3 Response Time objective (in business hours)	16 hours
Severity 4 Response Time objective (in business hours)	24 hours

Severity	Support Request Severity Definition
1	Critical business impact/service down: Business critical functionality is inoperable or critical interface has failed.
2	Significant business impact: A Software business feature or function of the Software is severely restricted in its use.
3	Minor business impact: Indicates the Software or functionality is usable and it is not a critical impact on operations.
4	Personal application or procedure is unusable (not critical to Client) and either an alternative is available or deferred maintenance is acceptable.

*Client will designate severity for each support request. Agile 3 will validate such severity and reserves the right to re-prioritize based upon the above definitions.*