

**MASTER SOFTWARE LICENSE AGREEMENT & END-USER LICENSE AGREEMENT FOR AGILE RISK MANAGEMENT LLC SOFTWARE****F-Response Software Terms**

**IMPORTANT - PLEASE READ THIS MASTER SOFTWARE LICENSE AGREEMENT (“AGREEMENT”) CAREFULLY. BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE THAT ACCOMPANIES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE, DO NOT INSTALL, COPY OR OTHERWISE USE THIS SOFTWARE AND, IF APPLICABLE, RETURN IT TO THE PLACE OF PURCHASE FOR A FULL REFUND.**

**AGILE RISK MANAGEMENT LLC MASTER SOFTWARE LICENSE AGREEMENT  
TERMS AND CONDITIONS**

1. **Scope of Agreement; Definitions.** This Agreement covers (i) the license and permitted use of the Agile Risk Management LLC (“Agile”) F-Response Software. Unless otherwise defined in this section, the capitalized terms used in this Agreement shall be defined in the context in which they are used. The following terms shall have the following meanings:

- 1.1. “Documentation” means Agile release notes or other similar instructions in hard copy or machine readable form supplied by Agile to Customer that describes the functionality of the Agile Software
- 1.2. “Agile Software” means any and all versions of Agile’s F-Response software.
- 1.3. “License Term” means the term of the applicable license as specified on an order form or as set forth in this Agreement.

2. **Grant of Software License.**

2.1. **Enterprise License.** Subject to the terms of this Agreement, Agile grants Customer a non-exclusive, non-transferable license to install the Agile Software and to use the Agile Software during the License Term, in object code form only.

2.2. **Third Party Software.** Customer acknowledges that the Agile Software may include or require the use of software programs created by third parties, and the Customer acknowledges that its use of such third party software programs shall be governed exclusively by the third party’s applicable license agreement.

3. **Software License Restrictions.**

3.1. **No Reverse Engineering; Other Restrictions.** Customer shall not, directly or indirectly: (i) sell, lease, redistribute or transfer any Agile Software; (ii) modify, translate, reverse engineer (except to the limited extent permitted by law), decompile, disassemble, create derivative works based on, or distribute any Agile Software; (iii) rent or lease any rights in any Agile Software in any form to any entity; (iv) remove, alter or obscure any proprietary notice, labels or marks on any Agile Software. Customer is responsible for all use of the Software and for compliance with this Agreement and any applicable third party software license agreement.

3.2. **Intellectual Property.** Agile or Agile licensors retain all title, copyright and other intellectual proprietary rights in, and ownership of, the Agile Software regardless of the type of access or media upon which the original or any copy may be recorded or fixed. Unless otherwise expressly stated herein, this Agreement does not transfer to Customer any title or any ownership right or interest in any Agile Software. Customer does not acquire any rights, express or implied, other than those expressly granted in this Agreement.

4. **Ordering & Fulfillment.** Pricing is set forth on the F-Response website and is subject to change at any time. Each order shall be subject to Agile’s reasonable acceptance. Delivery terms are FOB Agile’s shipping point.

5. **Payments.** Customer agrees to pay amounts invoiced by Agile for the license granted under this Agreement. If any authority imposes a duty, tax or similar levy (other than taxes based on Agile’s income), Customer agrees to pay, or to promptly reimburse Agile for, all such amounts. Unless otherwise indicated in an invoice, all Agile invoices are payable thirty (30) days from the date of the invoice. Agile reserves the right to charge a late payment in the event Customer fails to remit payments when due. In addition to any other rights set forth in this Agreement, Agile may suspend performance or withhold fulfilling new Customer orders in the event Customer has failed to timely remit payment for outstanding and past due invoices.

6. **Confidentiality.**

6.1. **Definition.** “Confidential Information” means: (a) any non-public technical or business information of a party, including without limitation any information relating to a party’s techniques, algorithms, software, know-how, current and future products and services, research, engineering, vulnerabilities, designs, financial information, procurement requirements, manufacturing, customer lists, business forecasts, marketing plans and information; (b) any other

information of a party that is disclosed in writing and is conspicuously designated as "Confidential" at the time of disclosure or that is disclosed orally and is identified as "Confidential" at the time of disclosure; or (c) the specific terms and conditions of this Agreement.

6.2. **Exclusions.** Confidential Information shall not include information which: (i) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving Party; (ii) the receiving Party can demonstrate by written evidence was rightfully in the receiving Party's possession at the time of disclosure, without an obligation of confidentiality; (iii) is independently developed by the receiving Party without use of or access to the disclosing Party's Confidential Information or otherwise in breach of this Agreement; (iv) the receiving Party rightfully obtains from a third party not under a duty of confidentiality and without restriction on use or disclosure, or (v) is required to be disclosed pursuant to, or by, any applicable laws, rules, regulatory authority, court order or other legal process to do so, provided that the Receiving Party shall, promptly upon learning that such disclosure is required, give written notice of such disclosure to the Disclosing Party.

6.3. **Obligations.** Each Party shall maintain in confidence all Confidential Information of the disclosing Party that is delivered to the receiving Party and will not use such Confidential Information except as expressly permitted herein. Each Party will take all reasonable measures to maintain the confidentiality of such Confidential Information, but in no event less than the measures it uses to protect its own Confidential Information. Each Party will limit the disclosure of such Confidential Information to those of its employees with a bona fide need to access such Confidential Information in order to exercise its rights and obligations under this Agreement; provided that all such employees are bound by a written non-disclosure agreement that contains restrictions at least as protective as those set forth herein.

6.4. **Injunctive Relief.** Each Party understands and agrees that the other Party will suffer irreparable harm in the event that the receiving Party of Confidential Information breaches any of its obligations under this section and that monetary damages will be inadequate to compensate the non-breaching Party. In the event of a breach or threatened breach of any of the provisions of this section, the non-breaching Party, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity, shall be entitled to a temporary restraining order, preliminary injunction and/or permanent injunction in order to prevent or to restrain any such breach by the other Party.

7. **DISCLAIMER OF WARRANTIES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AGILE AND ITS SUPPLIERS PROVIDE THE SOFTWARE AND SUPPORT SERVICES (IF ANY) AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF RELIABILITY OR AVAILABILITY, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, OF LACK OF VIRUSES, AND OF LACK OF NEGLIGENCE, ALL WITH REGARD TO THE SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THE SOFTWARE.

8. **EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL AGILE OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF AGILE OR ANY SUPPLIER, AND EVEN IF AGILE OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. **Limitations and Exclusions.**

9.1. **Limitation of Liability and Remedies.** NOTWITHSTANDING ANY DAMAGES THAT YOU MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED ABOVE AND ALL DIRECT OR GENERAL DAMAGES IN CONTRACT OR ANY OTHER THEORY IN LAW OR IN EQUITY), THE ENTIRE LIABILITY OF AGILE AND ANY OF ITS SUPPLIERS UNDER ANY PROVISION OF THIS AGREEMENT AND YOUR EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO THE GREATER OF THE ACTUAL DAMAGES YOU INCUR IN REASONABLE RELIANCE ON THE SOFTWARE UP TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE OR US\$5.00. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF ANY ACTS OR OMISSIONS RELATING TO THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO YEARS AFTER THE OCCURRENCE OF SUCH ACT OR OMISSION.

9.2. Exclusion of Other Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, DAMAGES (INCLUDING WITHOUT LIMITATION, LIABILITIES RELATED TO A LOSS OF USE, PROFITS, GOODWILL OR SAVINGS OR A LOSS OR DAMAGE TO ANY SYSTEMS, RECORDS OR DATA, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF ADVISED IN ADVANCE OR AWARE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

10. Verification. Agile may request that Customer complete a self-audit questionnaire in a form provided by Agile. If an audit reveals unlicensed use of the Agile Software, Customer agrees to promptly order and pay for sufficient licenses to permit all usage disclosed.

#### 11. Support Services

a. Rights and Obligations. This Agreement does not obligate Agile to provide any support services or to support any software provided as part of those services. If Agile does provide support services to you, use of any such support services is governed by the Agile policies and programs described in the user manual, in online documentation, on Agile's support webpage, or in other Agile-provided materials. Any software Agile may provide you as part of support services are governed by this Agreement, unless separate terms are provided.

b. Consent to Use of Data. You agree that Agile and its affiliates may collect and use technical information gathered as part of the support services provided to you, if any, related to the Software. Agile may use this information solely to improve our products or to provide customized services or technologies to you and will not disclose this information in a form that personally identifies you.

#### 12. Miscellaneous.

12.1. Legal Compliance: Restricted Rights. Each Party agrees to comply with all applicable Laws. Without limiting the foregoing, Customer agrees to comply with all U.S. export Laws and applicable export Laws of its locality (if Customer is not located in the United States), and Customer agrees not to export any Software or other materials provided by Agile without first obtaining all required authorizations or licenses. The Software provided to the United States government are provided with only "LIMITED RIGHTS" and "RESTRICTED RIGHTS" as defined in FAR 52.227-14 if the commercial terms are deemed not to apply.

12.2. Governing Law: Severability. This Agreement (including any addendum or amendment to this Agreement which is included with the Software) are the entire agreement between you and Agile relating to the Software and the support services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this Agreement. To the extent the terms of any Agile policies or programs for support services conflict with the terms of this Agreement, the terms of this Agreement shall control. This Agreement shall be governed by the laws of the State of Florida, USA, without regard to choice-of-law provisions. You and Agile agree to submit to the personal and exclusive jurisdiction of the Florida state court located in Tampa Florida and the United States District Court for the Middle District of Florida. If any provision of this Agreement is held to be illegal or unenforceable for any reason, then such provision shall be deemed to be restated so as to be enforceable to the maximum extent permissible under law, and the remainder of this Agreement shall remain in full force and effect. Customer and Agile agree that this Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods.

12.3. Notices. Any notices under this Agreement will be personally delivered or sent by certified or registered mail, return receipt requested, or by nationally recognized overnight express courier, to the address specified herein or such other address as a Party may specify in writing. Such notices will be effective upon receipt, which may be shown by confirmation of delivery.

12.4. Assignment. Neither Party may assign or otherwise transfer this Agreement without the other Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the consent of the other Party if a majority of its outstanding voting capital stock is sold to a third party, or if it sells all or substantially all of its assets or if there is otherwise a change of control. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and permitted assigns.

12.5. Force Majeure. Neither Party shall be liable for any delay or failure due to a force majeure event and other causes beyond its reasonable control. This provision shall not apply to any of Customer's payment obligations.

12.6. Mediation and Arbitration. Except for instance where equitable relief is permitted under this Agreement, any and all claims, disputes, or controversies arising under, out of, or in connection with this Agreement or the breach thereof, (herein "dispute") shall be resolved at the request of either party by final and binding arbitration. Arbitration shall be conducted in Tampa, FL, by a single arbitrator. The arbitrator shall be knowledgeable in the commercial aspects of software licensing, Internet applications, technical consulting services and copyright law and otherwise in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The parties shall meet to agree upon an arbitrator within fifteen (15) days after the receipt by the noticed party of the demand for arbitration delivered in the

manner set forth herein for providing notice to the parties. If the parties cannot agree on an arbitrator, then the American Arbitration Association shall select the arbitrator. The arbitrator shall make detailed written findings to support his/her award. The arbitrator shall render his/her decision no more than sixty (60) days after the parties finally submit the claim, dispute or controversy. Judgment upon the arbitration award may be entered in any court having jurisdiction.

12.7. Redistribution Compliance. A portion of the F-Response Software was derived using source code provided by Intel and Alistair Crooks (NetBSD), which requires the following notice be posted herein, and which applies only to the source code as thereby provided. F-Response code is distributed in binary form. F-Response source code, and the revised code contained within the F-Response source code, is not available for distribution. The name of Intel Corporation is not being used to endorse or promote this product, nor is the name of the author being used to endorse or promote this product. This information is presented solely to comply with the required Intel and NetBSD license agreements which require reproduction of the following copyright notice, list of conditions and disclaimer:

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12.8. General. This Agreement, including its exhibits (all of which are incorporated herein), are collectively the Parties' complete agreement regarding its subject matter, superseding any prior oral or written communications. Amendments or changes to this Agreement must be in mutually executed writings to be effective. The Parties agree that, to the extent any Customer purchase or sales order contains terms or conditions that conflict with, or supplement, this Agreement, such terms and conditions shall be void and have no effect, and the provisions of this Agreement shall control. Unless otherwise expressly set forth in an exhibit that is executed by the Parties, this Agreement shall control in the event of any conflict with an exhibit. Sections 2, 5, 7, 8, and 9, and all warranty disclaimers, use restrictions and provisions relating to Agile's intellectual property ownership, shall survive the termination or expiration of this Agreement. The Parties are independent contractors for all purposes under this Agreement.