

Effective Date [●] 2014

## **AGILEFANT GROUND LICENSE AGREEMENT**

### **1. Parties**

1.1 Agilefant Ltd, business identity code 2579940-2, Tähkätie 3 A 2 , 00390 Helsinki, Finland (“**Agilefant**”); and

1.2 [Customer Oy], business identity code [●], [●] (“**Customer**” or “**You**”).

(Customer and Agilefant hereinafter referred to together as “**Parties**” and each of them separately as “**Party**”)

### **2. Introduction**

2.1 Agilefant Ground (also the “**Software**”) is a tool for agile management. Agilefant Ground is owned and controlled by Agilefant. Your use of the Software is governed by this Agilefant Ground License Agreement (“**Agreement**”).

2.2 The Agreement constitutes a binding agreement between You and Agilefant Ltd., including its affiliates and suppliers (collectively “**Agilefant**”), defining Your and Agilefant’s rights and responsibilities with respect to the Software.

2.3 The main features and the system requirements of the Software are described at Agilefant website. You shall be solely responsible for obtaining necessary licenses for any third party software necessary for the use of Software.

### **3. License, License Fees and Termination**

3.1 Your right to use Software is subject to a duly payment of yearly recurring license subscription fees defined in Annex 1 (Prices), unless otherwise expressly agreed. You agree to provide Agilefant with correct and accurate billing information and keep such information always up-to-date.

3.2 Your right to use the Software is in force one (1) year at the time (“**Term**”) starting from the effective date of this Agreement, on the condition that the Agreement has not been terminated as agreed herein.

3.3 You are responsible for Your use of the Software and compliance with this Agreement.

3.4 You may terminate Your license subscription of the Software and this Agreement by giving Agilefant a written notice of termination at least two (2) months before the end of the then ongoing Term, and Your subscription and this Agreement will end after the Term during which You terminated Your license subscription and this Agreement.

3.5 If you decide to terminate Your license subscription and this Agreement, You may switch to use the open source version of Agilefant, as available at the time.

- 3.6 Either Party may immediately terminate this Agreement, including any license granted hereunder, if the other Party to this Agreement commits any material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by the first Party of such breach.

#### 4. **License Grant**

- 4.1 Agilefant grants to You, during the Term specified in section 3.2 above, a non-exclusive, revocable, non-transferable license to install, copy and use the Software (together with any updates, bug fixes, improvements, additions, modifications, enhancements or extensions to such Software as may be agreed by the Parties or provided by Agilefant) in your business use, subject to the Agreement and conditions set forth herein.
- 4.2 You may not copy, sublicense, redistribute, offer access via remote connections or networks or otherwise convey the Software to any third party. The aforementioned notwithstanding You may allow third party users (for example consultants and contractors working on your behalf) to use the Software subject to terms and conditions of the this Agreement, however you remain liable for such third party users. You may not modify the Software or create derivative works based on it.
- 4.3 The above mentioned notwithstanding, the license to any third party open source software included with Software is subject to respective open source terms, as further defined within section 6.2 below.
- 4.4 You agree to use the Software only for purposes permitted by this Agreement and any applicable laws, regulations and guidelines.
- 4.5 Within thirty (30) days of any termination of this Agreement, You shall make no further use of any copies, materials, documentation, reproductions and modifications of the Software (including but not limited to the purging of all machine-readable media relating to such Software) and documentation then in Your possession or control and all other property, materials and other items of Agilefant. You shall certify to Agilefant in writing, if so required by Agilefant, that the original and any copies of the Software and documentation and all other property, materials and other items of Agilefant, previously in Your possession or control, in whole or in part, in any form, including partial copies and modifications of the Software and documentation, have been returned to Agilefant or permanently destroyed.

#### 5. **Software Updates and Customer Service**

##### 5.1 **Software Updates**

- 5.1.1 Agilefant may, but is not obliged to, provide You with Software updates, enhancements and bug fixes from time to time. Agilefant suggests that You make use of any such new versions of the Software, but You are not required to do so. Agilefant reserves right to discontinue support versions that are older than one (1) year.

## 5.2 Customer Support

5.2.1 You may contact Agilefant in order to receive support and answers regarding problems or questions concerning the Software. More information regarding the user support is available at <http://agilefant.com/support/>. Unless otherwise expressly agreed, Agilefant uses reasonable efforts to answer to Your initial contact within 12 hours after receiving Your message (during ordinary business days in Finland), however answer or solution to any issue is not guaranteed.

## 5.3 Customer Contacts and Feedback

5.3.1 You may contact Agilefant to provide feedback, ideas, proposals or any other information regarding the Software. You may contact Agilefant either by email or regular mail at the following addresses:

- support@Agilefant.com; or
- Agilefant Ltd., Tähkätie 3 A 2 , 00390 Helsinki, Finland.

5.3.2 By submitting ideas, feedback or proposals (“**Feedback**”) to Agilefant, You acknowledge and agree that (i) Agilefant may have similar development ideas to the Feedback; (ii) Your Feedback does not contain confidential or proprietary information of You or any third party; (iii) Agilefant is not under any obligation of confidentiality with respect to the Feedback; (iv) Agilefant may freely use, distribute, exploit, and further develop and modify the Feedback for any purpose; and (v) You are not entitled to any compensation of any kind from Agilefant.

## 6. Intellectual Property Rights

6.1 You acknowledge and agree that Agilefant and its licensors own all rights, title and interest, including any copyright, patent, design right, trademark, database right and any other intellectual property rights (whether registered or not, and wherever in the world those rights may exist) (“**Intellectual Property Rights**”) in and to the Software. Except for Your limited right to use the Software in accordance with this Agreement, Agilefant and its licensors reserve all rights, title and interest in and to the Software, including all Intellectual Property Rights pertaining to the Software.

6.2 Software may include, or be accompanied with, certain third party software and materials licensed under open source license terms (such as license terms available at <http://opensource.org/licenses>), or similar. You accept and acknowledge that Intellectual Property Rights to such software and materials belong to third parties. Rights and obligations relating to such software and materials, including warranties, the rights to use, modify and redistribute are governed by the terms and conditions of the each respective license terms, which are available with the media containing the Software.

6.3 Nothing in this Agreement (or any other terms and conditions referred to in this Agreement) grants to You or shall be deemed as a grant to You of any right or license to use (in any manner whatsoever) any Agilefant or its licensors’ trade

names, trademarks, service marks, logos, domain names or any other commercial designations or distinctive brand features.

## **7. No Warranty, Backing-up the data**

7.1 YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SOFTWARE IS AT YOUR SOLE RISK AND THAT THE SOFTWARE IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7.2 YOUR USE OF THE SOFTWARE IS AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, OR OTHER DEVICE, OR LOSS OF DATA THAT RESULTS FROM SUCH USE. YOU ARE SOLELY RESPONSIBLE FOR MAKING BACK-UP COPIES OF ANY DATA USED WITH OR IN THE SOFTWARE.

7.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AGILEFANT AND ITS LICENSORS FURTHER EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND REGARDING SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## **8. Limitation of Liability**

8.1 SUBJECT ALWAYS TO SECTION 8.2, YOU EXPRESSLY UNDERSTAND AND AGREE THAT AGILEFANT AND ITS SUBSIDIARIES AND AFFILIATES SHALL NOT BE LIABLE TO YOU UNDER ANY THEORY OF LIABILITY (WHETHER CONTRACT, TORT INCLUDING NEGLIGENCE OR OTHERWISE) FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY YOU THROUGH YOUR USE OF THE SOFTWARE, INCLUDING ANY LOSS OF DATA, WHETHER OR NOT AGILEFANT OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING. AS SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR LIMITATIONS OF LIABILITY, THE LIABILITY OF AGILEFANT IS IN SUCH CASE LIMITED TO THE GREATEST EXTENT PERMITTED BY MANDATORY LAW.

8.2 NOTHING IN THIS AGREEMENT EXCLUDES THE LIABILITY OF AGILEFANT, ITS SUBSIDIARIES OR AFFILIATES FOR: (I) DEATH AND PERSONAL INJURY CAUSED BY NEGLIGENCE; (II) FRAUDULENT MISREPRESENTATION; OR (III) ANY OTHER LIABILITY WHICH CANNOT BE LIMITED BY APPLICABLE LAW.

## **9. Other Terms**

9.1 Unless otherwise agreed in writing, the prices specified in this Agreement are exclusive of value added tax. Value added tax shall be added to the prices in accordance with the then current regulations. You shall pay all taxes imposed by applicable law on the payments to Agilefant (except for the taxes based on Agilefant’s income) and all payments will be made without deduction,

- withholding, counterclaim or set-off of any kind or nature. All payments shall be made in Euro, unless otherwise agreed by the Parties in writing. The payment term is 14 days net from the date of invoice, unless otherwise agreed. Interest on delayed payments accrues in accordance with the Interest Act of Finland (633/1982, as amended).
- 9.2 Neither Party shall be liable for delays and damages caused by an impediment beyond its control, which it could not have taken into account at the time of the conclusion of this Agreement, and the consequences of which could not reasonably have been avoided or overcome by such Party. Strike, lock-out, boycott and other industrial action shall constitute a force majeure event also when the Party concerned is the object or a party to such an action.
- 9.3 This Agreement constitutes the whole legal agreement between You and Agilefant and governs Your use of the Software, and completely replaces any prior agreements between You and Agilefant in relation to the Software. Each Party confirms that in entering into the Agreement it has not relied upon any representations or statements not expressly incorporated herein.
- 9.4 You agree that if Agilefant does not exercise or enforce any legal right or remedy which is contained in this Agreement (or which Agilefant has the benefit of under any applicable law), this will not be taken to be a formal waiver of Agilefant's rights and that those rights or remedies will still be available to Agilefant.
- 9.5 If any court of law, having the jurisdiction to decide on this matter, rules that any provision of this Agreement is invalid, then that provision will be removed from the Agreement without affecting the rest of this Agreement. The remaining provisions of this Agreement will continue to be valid and enforceable.
- 9.6 Each Party shall keep in confidence all material and information received from the other Party and marked as confidential or which should be understood to be confidential, and may not use such material or information for any purposes other than those set out in this Agreement. The confidentiality obligation shall, however, not apply to material or information, (a) which is generally available or otherwise public; (b) which the receiving Party has received from a third party without any obligation of confidentiality; (c) which was in the possession of the receiving Party prior to receipt of the same from the other Party without any obligation of confidentiality related thereto; (d) which the receiving Party has independently developed without using material or information received from the other Party; or (e) which the receiving Party is required to provide due to law or regulation by the authorities. Each Party is entitled to use the professional skills and experience acquired in connection with this Agreement. The rights and obligations under this section 9.6 shall survive the termination of this Agreement and shall remain in force for a period of five (5) after the Agreement has been terminated.
- 9.7 Agilefant's internal and external auditors shall have the right to audit Your use of the Software and facilities in order to determine whether You have complied with your payment obligations and other terms of this Agreement. You shall assist in such audit at your own expense. If any audit reveals non-compliance, Agilefant shall give, as soon as reasonably possible, an appropriate new invoice, which shall correct such undercharging or other non-compliance.

- 9.8 The Software and Agilefant website may include links to third party sites and services on the Internet that enable You to interact with sites or services that are owned and controlled by third parties and that are not part of the Software or Agilefant's services. You must review and agree to the Agreement and conditions of these sites and services before using these sites or services. You accept and acknowledge that Agilefant has no control over the third party sites or services and assumes no responsibility for the services provided or material created or published on these third party sites or services. A link to a third party site does not imply that Agilefant endorses the site or the products or services referenced in the site.
- 9.9 The rights granted in the Agreement may not be assigned or transferred by You without the prior written approval of the other Party.
- 9.10 Agilefant reserves the right, in its sole discretion, to change the prices of the Software licenses after each Term. If the prices will be increased by more than 5 % for the next Term, Agilefant shall notify You about the change in writing at least three (3) months before the start of the next Term. If You do not accept the amended pricing, You may terminate this Agreement as set forth within section 3.4 above.
- 9.11 This Agreement and Your relationship with Agilefant under this Agreement shall be governed by the laws of Finland, excluding its choice of law provisions. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof shall be submitted to the district court of Helsinki as the first instance.
- 9.12 The following Annex forms an integral part of this Agreement:

Annex 1        Prices

10. **SIGNATURES**

This Agreement has been executed in two (2) originals, one for each Party.

[place and date]

[CUSTOMER]

\_\_\_\_\_

Name:  
Title:

\_\_\_\_\_

Name:  
Title:

[place and date]

AGILEFANT OY

\_\_\_\_\_

Name:  
Title:

\_\_\_\_\_

Name:  
Title: