

# PERFORCE End User License Agreement for Educational Users

## 1. Introduction

This is a License Agreement (“**Agreement**”) between **Perforce Software, Inc.**, a California corporation (“**Perforce**”), and \_\_\_\_\_ (“**Customer**”), a non-profit educational entity engaged in classroom teaching activity, in which Perforce grants Customer certain rights to use Perforce: The Fast Software Configuration Management System, for non-commercial educational use only.

## 2. Definitions

- A. “**Program**” shall mean the machine-readable object code of the computer software program or programs described in the Program Description attached as Attachment A to the Agreement.
- B. “**Release**” shall mean any version of a Program or any materials which are made commercially available by Perforce at or after the delivery of a Program, including any software provided for the purpose of improving the functions or performance of the Program, expanding the capability or ease of operation of the Program, or for the purpose of fixing errors in program logic, together with Documentation.
- C. “**Documentation**” shall mean the user manual(s) and any other materials supplied or made available by Perforce for use with the Program.
- D. “**Software**” shall mean, collectively, the Program and the Documentation.
- E. “**License**” shall mean Customer’s worldwide, nonexclusive right to use the Software which is granted by this Agreement.
- F. “**License File**” shall mean an ASCII file containing an encoded license string which enables the Program to operate in a specified multi-user configuration.
- G. “**Delivery Date**” shall mean the date that Perforce transfers or allows Customer to transfer a License File for the Program to Customer’s location by electronic mail or file transfer over a network.
- H. “**Software Support Fee**” shall mean the fee for providing Software Support as specified in this Agreement.
- I. “**Software Support**” shall mean support and maintenance services for the Program provided for in this Agreement and Attachment B.
- J. “**Per Human Being**” shall describe that form of software license which restricts the licensed software to being used by a specified maximum number of individual users, irrespective of whether such use is concurrent.

## 3. Items Provided by Perforce

- A. Perforce shall furnish Customer with the Software, as it is described in Attachment A. Program will be made available to be downloaded in machine-readable object code form by electronic file transfer. The Documentation will be delivered electronically as machine readable text files suitable for printing. Customer may copy, print, or reproduce the

Documentation without restriction, provided that all copyright and other proprietary notices are reproduced substantially similar to the originals.

- B. Perforce shall furnish to Customer one copy of the Program modules for each computer on which it is to run as designated in Attachment C.
- C. Perforce shall furnish to Customer a License File which will enable the Program to operate in the configuration specified in Attachment C.
- D. Customer acknowledges and agrees that it has independently verified that the Software is appropriate for the purposes for which Customer intends to use it, and that Customer did not rely upon any skill or judgment of Perforce in such selection.

#### **4. Grants of License**

- A. Perforce hereby grants to Customer a world-wide non-exclusive license to use the Software for Customer's own direct use for non-commercial, educational purposes in a classroom or laboratory teaching context only. Use of the Software for any other purpose constitutes a material breach of this Agreement.
- B. Customer may make any additional copies of the Software to the extent necessary for use of the Program. In addition, Customer may copy the Software for archival or backup purposes. Customer shall reproduce and include copyright or other proprietary notices on any copies in substantially the same form as appears in or on the original copies provided to Customer.
- C. The Program is configured by Perforce to support the number of users specified in Attachment C. The Program is licensed on a Per Human Being basis, with the maximum number of users permitted to use the server being that quantity specified in Attachment C. Customer understands that the Program enforces this limitation, and that any failure of the Program to perform in conformance with the Documentation in response to users in excess of the number specified in Attachment C is not a defect in the Program.
- D. Perforce hereby reserves all rights in and to the Software that are not specifically granted by this license Agreement.

#### **5. Software Support**

- A. In consideration of Customer's payment of the Software Support Fee set forth in Paragraphs 6(B) and 6(C) below, Perforce will (i) provide limited Software Support as described in Attachment B, and (ii) supply or make available at no additional charge to Customer any new Program Releases.
- B. If Customer fails to pay the Software Support Fee set forth in Paragraphs 6(B) and 6(C) below, Perforce shall have no obligation to provide Customer with Software Support or to provide Customer with new Program Releases.

#### **6. License and Software Support Fees**

- A. The License granted in Paragraph 4(A) of this Agreement is provided free of charge for any number of users.
- B. The total Software Support Fee for the first year of the term of this Agreement shall be \$3500.00, payable net 30 days from the Delivery Date. Payment of this fee shall entitle Customer to limited Software Support and Program Releases as set forth in Paragraph 5(A).

- C. The Software Support Fee for the second and subsequent years of the term of this Agreement shall be the then current published Educational User Software Support Fee. Support is optional after the first year.

## **7. Warranties and Limitations**

- A. Perforce warrants that it is the owner of the Software or otherwise has the right to grant the License to Customer without violating any rights of any third party, and that there is currently no actual threatened suit or claim by any third party based on an alleged violation of such right by Perforce. Perforce's liability under this warranty is limited to the Software Support Fee paid to Perforce by Customer under this Agreement.
- B. **DISCLAIMER OF WARRANTY.** EXCEPT AS EXPRESSLY PROVIDED HEREIN CUSTOMER RECEIVES THE SOFTWARE "AS IS." PERFORCE DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OR TRADE. OTHER WRITTEN OR ORAL STATEMENTS BY PERFORCE, ITS REPRESENTATIVES OR OTHERS DO NOT CONSTITUTE WARRANTIES OR CONDITIONS OF PERFORCE. NOTHING STATED IN THIS AGREEMENT WILL IMPLY THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ERRORS WILL BE CORRECTED AT A PARTICULAR TIME. CUSTOMER ASSUMES RESPONSIBILITY FOR THE SELECTION AND TESTING OF THE SOFTWARE TO ACHIEVE CUSTOMER'S INTENDED RESULTS AND FOR THE INSTALLATION USE AND RESULTS OBTAINED FROM IT. THESE LIMITATIONS DO NOT AFFECT CUSTOMER'S STATUTORY RIGHTS AS A CONSUMER, IF ANY.
- C. **NO CONSEQUENTIAL DAMAGES.** EXCEPT AS DESCRIBED IN PARAGRAPH 12(F) BELOW, NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS AND LOSS OF PROFITS), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- D. **EXCLUSIVE REMEDY.** THE PROVISIONS OF THIS SECTION 7 STATE THE EXCLUSIVE LIABILITY OF PERFORCE, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY CLAIM OF PATENT, COPYRIGHT, OR TRADE SECRET INFRINGEMENT.

## **8. Intellectual Property**

- A. Customer acknowledges and agrees that it obtains no ownership rights in the Software under the terms of this Agreement, and that Perforce has and retains all right, title, interest and ownership in and to the Software, and in any copies or updates of the Software whether made by Customer or Perforce.
- B. Customer acknowledges that the Software constitutes proprietary information and trade secrets of Perforce, whether or not any portion of the Software is or may be the subject of a valid copyright or patent.

- C. Customer may not alter any proprietary markings on the Software, including copyright, trademark, trade secret, and patent legends.
- D. Any authorized copies of the Software made by Customer shall contain a reproduction or equivalent of the copyright notice or other proprietary markings appearing on the Program and Documentation delivered by Perforce.
- E. Customer may not decompile, disassemble, or reverse engineer the Program.
- F. Perforce shall retain the copyright to all enhancements to the Software.

## **9. Term and Termination**

- A. This Agreement shall be for a term of one year from the Delivery Date, and may be extended, at Perforce's sole option, upon written request by Customer.
- B. Notwithstanding any other provision of this Agreement, any material breach of any provision of this Agreement by Customer shall be grounds for immediate termination of this Agreement and the License granted by it, without further obligation by Perforce to Customer.
- C. The License granted by this Agreement shall be in effect only for so long as this Agreement is in effect. Upon expiration or termination of this Agreement in any manner described herein, all rights granted by Perforce to Customer under this Agreement, including the License, shall revert to Perforce, and Customer shall have no further rights to use the Software; provided, however, that all limitations and obligations under Sections 2, 7, 8, 10, and 12 of this Agreement shall survive any termination or expiration of this Agreement, and shall continue to bind the parties.
- D. If Perforce notifies Customer in writing that this Agreement has terminated in any manner described herein, Customer shall, within fifteen (15) days of such notice, (i) discontinue all use of the Software; (ii) remove all copies of the Software contained in any computer memory or data storage device under the control of Customer; and (iii) certify to Perforce in writing that it has complied with the requirements of this Paragraph 9(D).

## **10. Arbitration and Mediation**

- A. Except as described in Paragraph 12(F), if any dispute arises under the terms of this Agreement, the parties agree to select a mutually agreeable neutral third party to help them mediate it. If the mediation is unsuccessful, the parties agree that the dispute shall be decided by binding arbitration under the rules issued by the American Arbitration Association. The decision of the arbitrator shall be final. Costs and fees (other than attorneys fees) associated with the mediation or arbitration shall be shared equally by the parties. Each party shall be responsible for its Attorneys' fees associated with arbitration.

## **11. Assignment, Delegation and Sublicensing**

- A. Customer may not sell, transfer, assign, delegate, subcontract, or sub-license the License, or any other rights or obligations under this Agreement, without the prior written consent of Perforce.

## 12. General

- A. **Applicable Law.** This Agreement shall be construed pursuant to substantive law of the State of California, excluding any choice of law rules.
- B. **Taxes.** Perforce shall be entitled to collect from Customer, in addition to the other amounts payable under this Agreement, all local, state and federal excise, sales, use, personal property, gross receipts and similar taxes (excluding taxes imposed on or measured by Perforce's net income) levied or imposed by reason of the transactions under this Agreement. Customer shall, upon demand, pay to Perforce an amount equal to any such tax(es) actually paid or required to be collected or paid by Perforce.
- C. **Public Reference.** Customer consents to the public use of its name as a customer of Perforce, unless Customer notifies Perforce in writing that it withholds such consent.
- D. **Modification.** This Agreement may not be modified or amended except by written notice which is signed by authorized representatives of each of the parties.
- E. **No Waiver.** The failure of either party to exercise any right or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same of any other term of the Agreement.
- F. **Equitable Remedies.** The parties recognize that money damages may not be an adequate remedy for any breach or of any obligation hereunder by Customer involving intellectual property or use of the Program beyond the scope of the license granted by this Agreement. The parties therefore agree that in addition to any other remedies available hereunder, by law or otherwise, Perforce and any third party from whom Perforce has licensed software or technology may be entitled to seek injunctive relief against any such continued breach by Customer of such obligations.
- G. **Exclusive Jurisdiction and Venue.** Any cause or action arising out of or related to this Agreement, including an action to confirm or challenge an arbitration award, may only be brought in the courts of applicable jurisdiction in California at Alameda County, and the parties hereby submit to the jurisdiction and venue of such courts.
- H. **Written Notice.** Any written notice from one party to the other required by this Agreement shall be deemed made on the date of mailing if sent by certified mail or overnight courier and addressed to the address specified below. Written notice sent by any other means shall be deemed made on the date it is received by the party to whom it is directed. Notice sent by facsimile or by electronic mail shall not be deemed "written notice" as contemplated by this Agreement.
- I. **Entire Agreement.** This Agreement, including its Attachments, constitutes the sole and entire agreement of the parties with respect to the subject matter hereof and supersedes any prior oral or written promises or agreements. There are no promises, covenants or undertakings other than those expressly set forth in this Agreement.
- J. **No Election of Remedies.** The pursuit by either party of any remedy to which it is entitled at any time shall not be deemed an election of remedies or waiver of the right to pursue any other remedies to which it may be entitled.
- K. **Independent Contractors.** Nothing in this Agreement shall be deemed or construed by the parties or by any other entity to create an agency, partnership or joint venture between Customer and Perforce.

- L. **Severability.** If any provision of this Agreement or any Attachment hereto is held invalid or otherwise unenforceable, the enforceability of the remaining provisions of this Agreement and the Attachments will not be impaired thereby.
- M. **Attachments.** Attachments A, B, and C hereto are incorporated into and made part of this Agreement.

**13. Signatures**

Perforce and Customer have read this Agreement and agree to be bound by its terms, in witness whereof the authorized representatives of each party have affixed their signatures below.

<p><b>Customer</b></p> <hr/> <p>Signature</p> <hr/> <p>Name (Print or Type)</p> <hr/> <p>Title</p> <hr/> <p>Date</p>	<p><b>Perforce Software, Inc.</b></p> <hr/> <p>Signature</p> <hr/> <p>Name (Print or Type)</p> <hr/> <p>Title</p> <hr/> <p>Date</p>
<p><b>Customer's mailing address:</b></p> <hr/> <hr/> <hr/> <hr/>	<p><b>Perforce's mailing address:</b></p> <p>Perforce Software, Inc          2320 Blanding Avenue          Alameda, CA 94501          USA</p>

## Attachment A: Program Description

The Program to be delivered as per this Agreement, PERFORCE — The Fast Software Configuration Management System, is a software configuration management system, providing repository, versioning, change control, shared access, integration, communication, auditing, and reporting services for groups of engineers, technicians and managers developing, maintaining and releasing production software.

The Program functions as described in the *PERFORCE Users' Guide*.

Perforce maintains a published list of platforms on which the Program is supported.

PERFORCE is a connection-based client/server system operating across heterogeneous platforms. The Program version of PERFORCE is comprised of a principal server program, p4d, one instance of which runs on a server machine and manages access to the central repository, or “depot,” in the Server Installation; and a principal client program, p4, instances of which are invoked locally on each host machine containing a Client Workspace. Other utility, administration and demonstration programs may be included as well.

Typically each user will have his/her own dedicated client installation, which contains copies of files from the repository at particular revisions. The server comprises a request handler, a data manager and a file librarian. The data manager implements database services and maintains a control meta-database describing the status and history of versioned files in the depot and transactions against the depot. The librarian implements an archive of versioned files. The request handler acts as an executive, sequencing actions and managing communication with the client.

PERFORCE provides a transactional change model based on atomic submissions of multiple files as one transactional “change.” PERFORCE provides a mechanism for selectively maintaining synchronization of client work areas with the server so that client installations can be reliably brought up to date. Once fetched, client files are localized on the client.

PERFORCE supports parallel development (branching) and integration and reconciliation of parallel changes. PERFORCE provides for reporting from the depot on the status of clients, file change histories, and work in progress.

## Attachment B: Perforce Software Support Agreement

### 1. Services Provided

Perforce shall provide software support services to Customer with the following conditions:

- A. All Software Support shall be performed during Business Days, which are from 8:00 a.m. to 5:00 p.m., Pacific Time, Monday through Friday, holidays excluded.
- B. Perforce will provide technical support via email and telephone concerning use of the Program and diagnosis of problems or errors.
- C. Perforce shall inform Customer of the status of defect reports related to any errors or malfunctions reported by Customer.
- D. Software Support does not entitle Customer to Software Modules available from Perforce which are designed to increase the number of users, to add capacity to the Server Installation, to increase performance or to cover functions that are not included in the Program currently licensed to Customer. Such Software Modules may be licensed from Perforce if generally available. If such additional Software Modules are licensed by Customer, Releases relating to them will be available as part of Software Support under this Agreement upon current payment of the then current Educational License and Support Fees for such Modules.
- E. Perforce is not responsible for errors or malfunctions caused by any hardware, operating system or third party application or software system.

### 2. Customer Responsibilities

- A. Customer will make its best efforts to keep current with the latest release of Program provided by Perforce.
- B. Customer shall designate one individual who shall be the principal contact for software support. Perforce shall be under no obligation to provide support services to any individual other than the person so designated. Customer has the right to change the contact at any time upon written notice to Perforce.
- C. In the event that Customer fails to meet its responsibilities as set forth in the preceding two paragraphs, Perforce's sole remedy shall be that it may, at its option, decline to provide technical support until Customer has complied.

**Designated Technical Support Contact:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

## Attachment C: Licensed Platform Configuration

The Licensed Configuration for \_\_\_\_\_ (Customer), detailing the specific platforms for which the Program will be supplied and to which this Agreement applies, is as follows:

### Server Licensing Information:

Server IP Address: \_\_\_\_\_

Operating System: \_\_\_\_\_

Number of Users: \_\_\_\_\_