PERFORCE End User License Agreement

1. Introduction

This is a License Agreement (**"Agreement"**) between Perforce Software, Inc., a California corporation (**"Perforce"**), and _____ (**"Customer"**), in which Perforce grants Customer certain rights to use the software program PERFORCE: The Fast Software Configuration Management System.

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 this Agreement, and such additional Releases of such programs as shall be made available by Perforce to Customer from time to time.

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 File"** shall mean an ASCII file containing an encoded license string which enables the Program to operate in a specified configuration.

F. **"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.

G. **"Effective Date"** shall mean the date upon which both parties have signed this Agreement.

H. **"License Fee"** shall mean the fee for licensing the Program or Programs specified in this Agreement.

I. **"Software Support"** shall mean support and maintenance services for Programs described in Attachment B to this Agreement.

J. **"Software Support Fee"** shall mean that applicable annual fee due for Software Support in accordance with Section 7 of this Agreement.

K. **"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.

L. **"Platform"** shall mean the combination of a particular type of computer and a particular operating system, or version of an operating system.

M. **"Initial Term"** shall mean one (1) year from the Delivery Date.

N. **"Renewal Term"** shall mean any terms subsequent to the Initial Term as defined in Paragraph 10(A).

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 D.

C. Perforce shall furnish to Customer a License File which will enable the Program to operate in the configuration specified in Attachment D.

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. In consideration of Customer's one-time payment of the License Fee, Perforce grants to Customer a world-wide non-exclusive license to install and use the Software for Customer's own direct internal business use in the configuration specified in Attachment D.

B. The license granted in paragraph 4(A) above shall expire 60 days from the Delivery Date if Perforce has not received the License Fee. When the license expires for this reason, the Program will cease to function. Such cessation of functionality is by design, and is not a defect in the Program. In this event, Perforce will restore the Program to functionality on the first business day following the day upon which Perforce receives the License Fee.

C. 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.

D. The Program is configured by Perforce to support the number of users specified in Attachment D. 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 D. 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 D is not a defect in the Program.

E. 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 Software Support Fees paid by Customer, Perforce will provide Software Support as described in Attachment B. The Software Support Fee for the Initial Term is included in the License Fee.

B. During the Initial Term, and any Renewal Terms for which Customer has paid Software Support Fees, Perforce will supply, or make available, at no additional charge to Customer, any new Releases.

6. Delivery Schedule

A. Perforce shall deliver or make available to Customer via electronic distribution the items to be furnished under Section 3 of this Agreement upon receipt from Customer of a bona fide purchase order or payment or combination thereof representing the full License Fee.

7. License and Software Support Fees

A. **License Fees.** The one-time License Fee is based on the total number of users the Program is configured to support, in accordance with the pricing schedule set forth in Attachment C. The License Fee covers Customer's installation, copying, and use of the Software.

B. **Software Support Fees.** The License Fee includes the Software Support Fee for the Initial Term of this Agreement. If Customer elects to purchase Software Support for any subsequent Renewal Terms, then the Software Support Fee due for such Renewal Terms shall be the support fee which Perforce charges its new customers as of the date Perforce receives Customer's purchase order for support renewal.

C. **Additional users.** Customer may increase the number of users the Program is configured to support, by paying an additional one-time License Fee for each additional user. For the Initial Term of this Agreement, the additional License Fee shall be in accordance with the pricing schedule in Attachment C. For any Renewal Terms, the additional License Fee shall be the then-current License Fee Perforce charges its new customers. In either case, the Support Fee portion of the additional License Fee will be pro-rated down so as to extend only to the anniversary of the Delivery Date.

D. **Per Human Being licensing.** It is the intention of the parties that the License Fee is paid on a Per Human Being basis, as described in Sections 2(K) and 4(D) of this Agreement. The parties acknowledge that it is possible for one human to log onto two systems at a site, resulting in the appearance of two users, although the parties intend that Customer pay for only one license in such case.

8. Warranties and Indemnification

A. Perforce warrants that Perforce has the legal right to grant Customer the license as set out in this Agreement, and that the Software does not infringe any third party intellectual property or other rights.

B. Perforce warrants that there are no pending or threatened lawsuits concerning any aspect of Software and that Software has not been published in such a way as to lose any of its copyright protection.

C. Perforce warrants that Program is in substantial compliance with the Program specifications and descriptions referred to in Attachment A and the Documentation; provided, however, that Perforce shall not be liable under this warranty if Customer has failed to incorporate all upgrades provided to Customer by Perforce.

D. Perforce's liability under the warranties set forth in clauses A, B, and C of this Section 8 is limited to the License and Software Support Fees paid to Perforce by Customer under this Agreement.

E. **DISCLAIMER OF WARRANTIES.** WITH THE EXCEPTION OF THE WARRANTIES SET FORTH ABOVE, PERFORCE PROVIDES NO WARRANTY WHATSOEVER ON ANY PROGRAM HEREUNDER, EXPRESS, IMPLIED OR OTHERWISE. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, PERFORCE DISCLAIMS ALL

WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE PROGRAM, AND ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

F. **NO CONSEQUENTIAL DAMAGES.** EXCEPT AS SET FORTH IN PARAGRAPHS 8(G) AND 13(E) 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.

G. Notwithstanding any other provision of this Agreement, Perforce shall defend, indemnify and hold harmless Customer and its officers, directors, shareholders, employees, accountants, attorneys, agents, affiliates, subsidiaries, successors and assigns against any claim or threat of claim that the Software infringes any intellectual property right of any third party. Perforce shall pay the court costs, legal fees and litigation expenses as they are incurred, and any damages finally awarded or settlement agreed upon, resulting from any such claim or threat of claim, provided that Customer (i) promptly gives Perforce written notice of any such claim, (ii) gives Perforce full authority to defend any such claim, and (iii) provides Perforce with all information and assistance Perforce requests in connection with such defense.

H If a temporary or permanent injunction is obtained against the use of any part of the Software for the reason that it infringes any third party's intellectual property rights, Perforce shall, at its option and expense, either (i) procure for Customer the right to continue to use the Software, or (ii) modify the Software so that it becomes non-infringing. If Perforce selects the second option, Perforce's obligation to keep the Software in substantial compliance with the Documentation shall remain unaffected.

I. **EXCLUSIVE REMEDY.** THE PROVISIONS OF THIS SECTION 8 STATE THE EXCLUSIVE LIABILITY OF PERFORCE, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY CLAIM OF PATENT, COPYRIGHT, OR TRADE SECRET INFRINGEMENT.

9. *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. 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.

10. Term and Termination

A. The Initial Term and each subsequent Renewal Term of the Agreement shall be renewed automatically for subsequent one-year terms ("Renewal Terms") unless either party notifies the other in writing, at least thirty (30) days prior to the expiration of the current Initial or Renewal Term, of its intent to cancel the renewal.

B. Either party shall have the right to terminate this Agreement in the event that the other party commits a material breach of its obligations. Intent to terminate shall be made by a written notice setting forth the details of the breach. Termination shall become effective thirty (30) days from the date that the notification of intent to terminate was given, unless the breaching party has corrected the breach prior to the end of that thirty (30) day period.

C. Notwithstanding clause B above, either party shall have the right to terminate this Agreement effective immediately if a petition of bankruptcy is filed by or against the other party, the other party makes an assignment for the benefit of creditors, or the other party admits to being unable to meet its obligations as they come due. Intent to terminate shall be made by a written notice, sent by certified mail or overnight courier to the party by or against which bankruptcy is filed.

D. **Survival Provisions.** The parties' rights and obligations under Sections 2, 8, 9, 11, 12, and 13 of this Agreement survive any termination or expiration of this Agreement. The parties' rights and obligations under Section 4 of this Agreement survive any termination or expiration of this Agreement, except termination due to a material breach by Customer of its obligations under this Agreement. Upon any termination or expiration of Agreement, all rights granted by Perforce to Customer, except those mentioned in this paragraph, shall revert to Perforce.

E. If this Agreement is terminated due to a material breach by Customer of its obligations under this Agreement, Perforce may, at its sole discretion, revoke the license granted under Paragraph 4(A) of this Agreement. If Perforce notifies Customer in writing that its License has been revoked, 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 10(E).

11. Arbitration and Mediation

A. With the exception of Section 13(E) below, 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.

12. Assignment and Delegation

A. Neither party may sell, transfer, assign, delegate, or subcontract any rights or obligations under this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.

B. Notwithstanding clause A above, if a party sells or transfers to a single entity all or substantially all of its business to which this Agreement relates, that party may, without the

other party's consent, assign or delegate its rights or obligations under this Agreement to that entity.

C. When an assignment or delegation is made pursuant to clause B above, Perforce will provide a License File to the transferee upon receipt of copies of properly executed documents which effect such assignment or delegation.

13. 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. **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.

C. **Modification.** This Agreement may not be modified or amended except by written notice which is signed by authorized representatives of each of the parties.

D. **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.

E. **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.

F. **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.

G. **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.

H. **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.

I. **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.

J. **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.

K. **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.

L. **Attachments.** Attachments A, B, C, and D hereto are incorporated into and made part of this Agreement.

14. 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.

Customer	**Perforce Software, Inc.**
_____ Signature	_____ Signature
_____ Name (Print or Type)	_____ Name (Print or Type)
_____ Title	_____ Title
_____ Date	_____ Date
Customer's mailing address: _____ _____ _____ _____	**Perforce's mailing address:** Perforce Software, Inc 2320 Blanding Avenue Alameda, CA 94501 USA

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. The Program also includes all other modules for which a link to either a user manual or release notes is provided at any time on the "Documentation" page of Perforce's web site (http://www.perforce.com/ perforce/technical.html). 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: Terms and Conditions of Support

1. Services Provided

In consideration of the Software Support Fee(s) paid by Customer and Customer's agreement to meet the responsibilities set forth below, Perforce shall provide to Customer the following Technical Assistance and Maintenance services:

Technical Assistance

A. Perforce shall assist Customer in diagnosing errors and malfunctions which occur when the Program is used by Customer.

B. Perforce shall provide support services to Customer to attempt to correct diagnosed errors and malfunctions. Perforce is not responsible for errors or malfunctions caused by any hardware or any third party operating system.

C. All Technical Assistance shall be performed between 8:00 a.m. and 5:00 p.m., Pacific Time, Monday through Friday, holidays excluded.

D. Perforce will provide Technical Assistance by email or telephone.

E. Perforce makes the following specific commitments to response to requests for Technical Assistance from Customer:

   1. to accept/acknowledge the support request via email or phone within one (1) business day of receipt of request;

   2. to inform Customer of current known status of the problem and enter a Job Report in Perforce's tracking system when appropriate;

   3. to provide a response within three (3) business days detailing Perforce's analysis and/or assessment, including options and estimated time for resolution;

   4. to make best effort, for bona fide defect or problem report, to develop a software fix or workaround in a timely fashion;

   5. for support calls identified by Customer as "urgent," to provide a proposed resolution or response within one (1) business day.

Maintenance

F. Perforce will make each Release of Program published during the term of the Software Support Agreement available to Customer for download as provided in Paragraph 3(A). All such downloads must be initiated by Customer. Perforce shall make best efforts to provide Releases that implement corrections and shall make best efforts to assist Customer in using the Program in a way that can avoid diagnosed errors, malfunctions and defects.

G. Customer is not entitled to receive any new software from Perforce which Perforce does not deem to be a part of the Program. For example, Customer is entitled to all updates and upgrades to the Program, but should Perforce release another software package with related but different functionality under a different product name, Customer would not be entitled to such software as an update or upgrade to the Program.

H. Customer is entitled to download, at no additional cost, versions of the Program for any additional Platforms available from Perforce as listed in Perforce's published offering of products, provided that the aggregate configuration of users supported among all servers does not exceed the Licensed Configuration.

I. From time to time, Perforce may choose to cease maintenance of certain Platforms. Perforce will do this in two steps. First, the Platform will be designated as "Obsolescent," which means Perforce will make new Releases available for that Platform only upon explicit customer request. No less than one year after being designated "Obsolescent," the Platform will be designated as "Discontinued," which means Perforce will no longer make new Releases available for that Platform at all. Platforms shall be designated "Obsolescent" or "Discontinued" on Perforce's web site; it shall be Customer's responsibility to check the web site for changes in designation of any given Platform.

J. The designation of a Platform as either "Obsolescent" or "Discontinued" shall not affect Perforce's obligation to provide Technical Assistance as set forth in paragraphs A through E of this section.

K. Customer has the right to change the server IP addresses, port numbers, and/or Platforms in the Licensed Configuration at no additional cost at any time upon written notification to Perforce.

2. Customer Responsibilities

A. Customer will make its best commercially reasonable efforts to keep current with the latest Release of Program provided by Perforce.

B. Customer shall designate the appropriate number of individuals as contact(s) for Software Support, as agreed by the parties. The total number of contacts is not to exceed two (2) contacts per hundred (100) users. Customer has the right to change the contacts at any time upon written notification 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.

Attachment C: Price Schedule

1. License Fees

The License Fee is based on the number of users purchased under this Agreement, according to the table below:

First 20 users:	$750.00 per user
Users number 21 - 50:	$700.00 per user
Users number 51 - 100:	$650.00 per user
Users number 101 - 250:	$600.00 per user
Users number 251 - 500:	$550.00 per user
Users in excess of 500:	$500.00 per user

For example, the License Fee for a 30-user installation would be $750.00 per user for the first 20 users ($15,000.00), plus $700.00 per user for the 21st through 30th user ($7,000.00), for a total License Fee of $22,000.00.

2. Software Support Fees

Software Support Fees are $150 per user per year.

Attachment D: 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: _____

Server port number: _____

    (The IP address and port number are required in order to prepare the License File.)

Type of computer: _____

Operating System: _____

Number of Users: _____

Designated Technical Support Contact(s):

Name: _____

Title: _____

Email: _____

Phone: _____