



**SOFTWARE LICENSE AGREEMENT HELIX IPLM
(DECEMBER 1, 2023)**

PLEASE READ THE FOLLOWING LICENSE AGREEMENT BEFORE INSTALLING AND USING THIS SOFTWARE PROGRAM ASSOCIATED WITH THIS SOFTWARE LICENSE AGREEMENT.

CLICKING ON THE “ACCEPT” OR “YES” BUTTON IN RESPONSE TO THE ELECTRONIC SOFTWARE LICENSE AGREEMENT (THIS “LICENSE AGREEMENT”) INQUIRY AS TO ACCEPTANCE OF THE TERMS OF THIS LICENSE AGREEMENT, OR BY INSTALLING OR DOWNLOADING THE SOFTWARE, INDICATES ACCEPTANCE OF, AND AGREEMENT TO, AND LEGALLY BINDS, YOU, AND YOUR EMPLOYER, AS APPLICABLE (COLLECTIVELY THE “LICENSEE”), AND PERFORCE SOFTWARE, INC., A DELAWARE CORPORATION (“PERFORCE”), TO THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT (INCLUDING ANY TERMS, CONDITIONS, AND RESTRICTIONS CONTAINED IN ANY ORDER RELATING TO THE SOFTWARE). IF THE LICENSEE DOES NOT ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT THEN DO NOT DOWNLOAD, INSTALL, OR OTHERWISE USE THE SOFTWARE.

THE RIGHT TO USE THE SOFTWARE IS CONDITIONAL UPON ACCEPTANCE OF THIS LICENSE AGREEMENT, UNLESS THE LICENSEE HAS ENTERED INTO A WRITTEN AND DULY SIGNED LICENSE AGREEMENT WITH PERFORCE, IN WHICH CASE SUCH SIGNED LICENSE AGREEMENT WILL GOVERN THE LICENSEE’S USE OF THE SOFTWARE.

1 DEFINITIONS

For purposes hereof, the terms provided below, when used anywhere in this Agreement with initial capital letters, will have the respective meanings as set forth below:

1.1 “Authorized Users” shall mean an employee or any third party delivering services to Licensee pursuant to a written contract with Licensee (each, a “Third-Party Agent”) of Licensee who has been registered in the Licensed Software’s database by the Licensee to be able to log into and access the Licensed Software. The number of Authorized Users having access to the Licensed Software may not exceed, at any one time, the number of licenses of the Licensed Software licensed by Licensee. For the avoidance of doubt, any non-human operated device that is registered in the Licensed Software’s database will be counted as an Authorized User under this Agreement.

1.2 “Documentation” means all documentation, user manuals, reference manuals, release, application, and methodology notes, and/or written utility programs and related material provided by Perforce to Licensee with respect to the Licensed Software.

1.3 “Licensed Software” means (a) the software tools provided to Licensee by Perforce in executable form (but not the source code relating to the Licensed Software) as specified in the Transaction Documents, (b) the Documentation related thereto, (c) any updates, patches, and new releases thereof that Perforce may provide to Licensee from time to time, (d) any Custom Modifications that are incorporated in the Licensed Software; and (e) any additional features that may be activated for an additional License Fee, including, without limitation, the Planning BOM Feature and the Geofencing Feature.

1.4 “Software Support Services” means technical support and maintenance services for the Licensed Software as described in Perforce’s then-current Software Support terms and conditions that are made available on Perforce’s website. Software Support Services includes any subsequent new releases, patches, bug fixes, workarounds performance improvements, functional enhancements, corrections to application problems, or support for new hardware platforms for the Licensed Software. Software Support Services are included in the License Fees for the Licensed Software.

1.5 “Transaction Document” means, collectively, a duly authorized quotation issued by Perforce to Licensee that specifies the Licensed Software and may include other terms and conditions governing such Licensed Software (such as the License Fee and the License Term), and, if applicable, a purchase order issued by Licensee to Perforce in response to and reflecting such quotation (with no additional or different terms, unless such additional or different terms are expressly accepted by Perforce in writing).

2 GRANT OF LICENSE; RESTRICTIONS

2.1 Grant of License. In consideration of Licensee's payment of the applicable license fees, and subject to the terms and conditions of this Agreement, Perforce grants to Licensee a limited, non-sub licensable, non-exclusive, non-transferable, fully-paid, time-based license for Licensee's Authorized Users to: (a) install and use the Licensed Software in accordance with the Documentation for Licensee's own direct internal business purposes, and subject to any limitation on use specified in this Agreement; (b) install and use the Documentation solely in conjunction with and in support of Licensee's licensed use of the Licensed Software; and (c) make the number of exact copies of the Licensed Software as required for archival and back-up purposes, and a reasonable number of copies of the Documentation to support the licensed number of Authorized Users, provided that each copy of the Licensed Software and the Documentation retains all copyright and other proprietary notices included in the original copy provided by Perforce to the Licensee. Perforce hereby reserves all rights in and to the Licensed Software and the Documentation that are not specifically granted by this Agreement. Other than as expressly set forth in this Section 2, Perforce grants and Licensee receives no other rights or licenses to the Licensed Software or the Documentation or any intellectual property rights related thereto, whether by implication, estoppel, or otherwise.

2.2 License Restrictions. Except as expressly provided in Section 2.1 above, Licensee will not, either directly or indirectly, cause, instruct, direct, or permit any other party to: (a) reverse engineer, translate, disassemble, decompile, sell, rent, lease, manufacture, adapt, create derivative works, as defined in the United States Copyright Act of 1976, Title 17 USC Section 101, from, or otherwise modify or distribute the Licensed Software or the Documentation, or any part thereof; (b) bundle or incorporate the Licensed Software with or into any other software (provided that the foregoing shall not apply to incorporation of the Licensed Software into other commercial software programs via APIs as specified in the Documentation) unless expressly permitted by Perforce in writing and only to the extent necessary to effect the intended use of the Licensed Software under this Agreement; (c) or attempt to discover any source code or underlying ideas or algorithms of the Licensed Software, nor permit any third party to do so unless expressly permitted by Perforce and except as necessary to effect the intended use of the Licensed Software under this Agreement or create any derivative work of the Licensed Software or any Confidential Information of Perforce; (d) copy, in whole or in part, the Licensed Software or the Documentation; (e) delete any copyright, trademark, patent or other notices of proprietary rights of Perforce or other parties as they appear anywhere in or on the Licensed Software or Documentation; (f) use the Licensed Software to offer any commercial timesharing, rental, or sharing arrangements, or on a "service bureau" basis (for the avoidance of doubt, the foregoing shall not be interpreted to limit Licensee's ability to use the Licensed Software to provide design services for its customers); (g) tamper with, or attempt to tamper with, or circumvent or disable, or attempt to circumvent or disable, any license key or other limiting function delivered with the Licensed Software, or otherwise attempt to gain access to functionality or capacity that is not validly licensed by Licensee; (h) without the prior written consent of Perforce, disclose performance statistics or the results of any benchmarking of the Licensed Product (whether or not obtained with Perforce' assistance) to any third parties; or (i) use the Licensed Software or Documentation to develop a product that competes with the Licensed Software.

2.3 Additional Licensed Software Features. The Licensed Software licensed under the terms of this License Agreement contains additional features that, upon payment of additional License Fees as set forth in the applicable Transaction Documents, and subject to the terms and restrictions below, can be made available to Licensee during the applicable License Term:

(a) Planning BOM Feature. The Licensed Software contains the ability to provide intellectual property bill of materials management within the Licensed Software (the "Planning BOM Feature"). The Planning BOM Feature can be activated in the Licensed Software so long as the Licensee purchases access for no fewer than twenty (20) Authorized Users. Notwithstanding the foregoing, the Licensee must acquire access to the Planning BOM Feature equal to the number of Authorized Users it requires. Any use of the Planning BOM Feature for any other purpose than as set forth in this Section 2.3(a) will be a breach of the Agreement.

(b) Geofencing Feature. The Licensed Software contains the ability to provide geofencing within the Licensed Software (the "Geofencing Feature"). The Geofencing Feature can be activated in the Licensed Software so long as the Licensee purchases access for no fewer than twenty (20) Authorized Users. Notwithstanding the foregoing, the Licensee must acquire access to the Geofencing Feature equal to the number of Authorized Users it requires. Any use of the Geofencing Feature for any other purpose than as set forth in this Section 2.3(b) will be a breach of the Agreement.

2.4 Authorized Users. Licensee shall not permit anyone other than Authorized Users to use the Licensed Software, and shall ensure that all Authorized Users shall have executed non-disclosure agreements with Licensee that include within their scope the Confidential Information of Parties such as Perforce and contain provisions at least as restrictive as the provisions contained in Section 8 of this Agreement. Licensee shall be wholly responsible and liable for all acts and omissions of Authorized Users, including, without limitation, any use of the Licensed Software or Documentation, protection of Confidential Information, and compliance with all the terms and conditions of this Agreement.

2.5 Custom Modifications. Perforce may develop and incorporate modifications or enhancements to the Licensed Software to meet the particular needs of Licensee or to improve the utility of the Licensed Software to Licensee, whether on its own initiative or upon request of Licensee (collectively, “Custom Modifications”). Upon completion and incorporation into the Licensed Software, Custom Modifications are considered as part of the Licensed Software for all purposes of this Agreement. For the avoidance of doubt, Perforce retains all right, title, ownership, and interest, including all intellectual property rights, in and to the Custom Modifications.

2.6 Database. The Neo4j database included with, or separately licensed for use with, the Licensed Software (the “Database”) shall only be used to store data generated from the Licensed Software. Further, Licensee acknowledges and agrees that access to the Database by any means other than the Licensed Software, without prior written approval from Perforce, will constitute a material breach of this Agreement for which Perforce will be entitled to terminate the Agreement immediately in accordance with the provisions of Section 8.2 of the Agreement.

2.7 Compliance with Laws; Export Control. Licensee, on behalf of itself and its affiliates and Authorized Users, agrees to comply fully with all applicable laws, statutes, regulations, rules, ordinances, codes, and standards relating to any export controls and economic sanctions laws of the United States or abroad. Licensee acknowledges that the Licensed Software is of United States origin and is subject to the Export Administration Regulations (the “EAR”) administered by the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”), and the laws and regulations governing economic sanctions and embargoes administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). Accordingly, any use, transshipment, or diversion of the Licensed Software contrary to applicable export control laws or sanctions laws is prohibited. Licensee warrants and covenants that: (a) Licensee and its affiliates will not export, re-export, re-sell, provide access to, or otherwise transfer the Licensed Software or related technology with knowledge that a violation of the U.S. law, the EAR, or the terms of any order, license, license exception, or other authorization issued under the EAR has occurred, is about to occur, or is intended to occur in connection with the item; and (b) Licensee and its affiliates will not export, re-export, re-sell, provide access to, or otherwise transfer the Licensed Software into any country or region subject to comprehensive economic sanctions (*i.e.*, currently Cuba, Iran, North Korea, Syria, the Crimea Region of Ukraine, and Russia). Licensee further represents that: (i) Licensee and its affiliates are not, and are not acting on behalf of, (1) any natural person or entity who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export, reexport, or transfer of the Licensed Software or related technology, or (2) any natural person or entity listed on OFAC’s list of Specifically Designated Nationals and Blocked Persons or the Consolidated Sanctions List, or BIS’s Denied Persons List, Entity List, or Unverified List; and (ii) Licensee and its affiliates will not permit the Licensed Software to be used for any purposes prohibited by law, including but not limited to any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons. Licensee shall exercise diligent efforts to ensure its and its affiliates’ compliance with this Section 2.7.

2.8 Federal Government End Use Provisions. Perforce may provide the Licensed Software for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Licensed Software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), and the Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Perforce to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights.

2.9 Free or “Open Source” Components. The Licensed Software may include components, including, without limitation, programs, applications, tools, utilities, libraries, and other programming code) that are made available from third parties under a free or open source licensing model (“Open-Source Components”). Open-Source Components included in the Licensed Software are redistributed by Perforce under the terms of the applicable Open

Source Components license for such Open Source Component. Your receipt of the Open Source Components will neither enlarge nor curtail your rights or obligations under the license applicable to such Open Source Component. Copies of the licenses for the Open-Source Components that are included with, or used in, the Licensed Software can be found in the Documentation.

2.10 Licensee Back-Ups. Licensee is responsible for backing up any and all data or reports produced by the Licensed Software, and for providing an operating environment for the Licensed Software as specified in the Documentation.

2.11 Verification. Upon providing Licensee with ten (10) days' advance written notice, and subject to Performer's obligations provided in Section 8 of this Agreement, Performer may review Licensee's use of the Licensed Software to verify Licensee's compliance with the terms of this Agreement. Any such verification process will be: (a) restricted in scope, documentation, manner, and duration to that which is reasonably necessary to achieve its purpose; and (b) conducted during regular business hours at Licensee's facilities if a remote verification process is not possible. Performer will not unreasonably interfere with Licensee's business activities during such verification process. Licensee will be liable for promptly remedying any underpayments revealed during the verification process at the then-current price per Authorized User. If the result of the verification process reveals a failure to materially comply with terms and conditions of this Agreement, and/or if the audit reveals an underpayment of at least ten percent (10%) or more that the Licensee is currently paying, Licensee will also be liable for the costs of the verification process in addition to any unpaid fees, or other damages, and any other remedies available to Performer in this Agreement.

3 FEES; PAYMENTS; RENEWALS; AND TAXES

3.1 Fees. In consideration of the rights granted herein, Licensee shall pay Performer the aggregate subscription license fees (the "License Fees") set forth on the Transaction Documents in the amounts and according to the terms specified on the Transaction Documents. Upon request of Licensee, Performer may provide consulting services (including on-site consulting services at Licensee's location). Consulting services shall be provided subject to and pursuant to the terms and conditions of this Agreement.

3.2 Payment. All payments due hereunder shall be made in US dollars. In addition to any remedies Performer may have hereunder or at law, any payments more than thirty (30) days overdue will bear a late payment fee of one and one-half percent (1.5%) per month, or, if lower, the maximum rate allowed by law. Delinquency in payment may result in a delay or suspension of the Licensed Software implementation timetable or services (including Software Support Services) provided by Performer.

3.3 Automatic Renewal. Unless otherwise agreed upon by the parties in writing, the Licensed Software will automatically renew upon the expiration of the License Term specified in the Transaction Documents (the "Anniversary Date") for a period of equal duration (the "Renewal Term"), and the License Fees will be invoiced at least forty-five (45) days prior to the upcoming Anniversary Date, unless either Party provides written notice of its intent not to renew at least sixty (60) days prior to the Anniversary Date. Performer reserves the right to increase the License Fees for the Renewal Term over the fees charged in the prior, expiring License Term (which such increase will not take into account any transaction incentives included on a prior order).

3.4 Taxes. All License Fees are exclusive of all sales, value added taxes, goods, and services taxes, withholding taxes, customs duties, or similar taxes, duties, and charges (collectively, "Taxes"). Such Taxes shall be incremental to any License Fees and shall be payable by Licensee in accordance with applicable law. Licensee shall pay to Performer an amount equal to any such Taxes actually paid, or required to be collected and paid, by Performer with respect to the transactions contemplated in this Agreement, and under any subsequent invoice, unless Licensee provides Performer with a fully-completed certificate of exemption from any Taxes required to be collected and paid by Performer, which such acceptance of the certificate of exemption will be subject to Performer's reasonable discretion.

4 WARRANTIES

4.1 Limited Warranty. Performer warrants that for a period of sixty (60) days after the receipt of the latest release of the Licensed Software (the "Warranty Period"), the Licensed Software will perform substantially in accordance with its Documentation. Performer does not warrant, however, that Licensee's use of the Licensed Software will be uninterrupted, that the operation of the Licensed Software will be error-free, that the Licensed Software will meet Licensee's requirements, or that all errors will be corrected. If the Licensed Software does not perform as herein warranted, and if Licensee is current in payment of the License Fees and Licensee promptly notifies Performer in writing of any such error during the Warranty Period, Performer shall undertake, at its own expense, to correct the non-conforming portion of the Licensed Software. If correction is not commercially practicable within a reasonable time,

in the sole determination of Perforce, Perforce shall refund to Licensee any amounts paid by Licensee with respect to that portion of non-conforming Licensed Software and the remaining period of the applicable License Term then in effect (with the License Fee determined on a pro rata monthly basis). THE FOREGOING ARE LICENSEE'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF THE LIMITED WARRANTY PURSUANT TO THIS SECTION 4.1.

4.2 Limited Warranty Not Applicable. Perforce's warranty obligations as set forth in Section 4.1 above are made to and for the benefit of Licensee only and shall be enforceable against Perforce only if: (a) the Licensed Software has been used at all times in accordance with the guidelines and requirements set forth in the Documentation and this Agreement; and (b) Licensee has not (i) made or caused to be made modifications, alterations, or additions ("Licensee Modifications") to the Licensed Software that caused it to deviate from the Documentation, except if such Licensee Modifications were expressly approved by Perforce in writing, or (ii) failed to accept any updates, patches, or new releases, unless Perforce is supporting the previous version of the Licensed Software for Licensee as evidenced in a Transaction Document.

4.3 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 4, THE LICENSED SOFTWARE IS PROVIDED "AS IS," AND PERFORCE, ON BEHALF OF ITSELF AND ITS AFFILIATES, DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS RELATING TO THE LICENSED SOFTWARE, OR OTHER SUBJECT MATTER OF THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. PERFORCE DOES NOT MAKE ANY WARRANTY WITH RESPECT TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE LICENSED SOFTWARE. TO THE EXTENT THAT PERFORCE IS NOT PERMITTED BY APPLICABLE LAW TO DISCLAIM ANY WARRANTY PROVIDED HEREIN, THE SCOPE AND DURATION OF SUCH WARRANTY SHALL BE THE MINIMUM REQUIRED UNDER SUCH LAW.

5 INFRINGEMENT INDEMNITY

5.1 Perforce will, at its expense, defend or settle and hold Licensee and its parents, subsidiaries, affiliates, successors, and assigns, and the employees, agents, officers, directors, shareholders and members of Licensee (collectively, "Licensee Indemnified Parties") harmless from any and all claims, actions or allegations brought against any Licensee Indemnified Parties arising out of any infringement by the Licensed Software of any US patent, US copyright, trade secret or other proprietary right of any third party asserted under US law, and shall pay any final judgment awarded or settlements entered into; *provided*, that Licensee gives prompt written notice to Perforce of any such claim, action, or allegation of infringement and gives Perforce the authority to proceed as contemplated herein. Perforce will have the exclusive right to defend any such claim, action, or allegation and make settlements thereof at its own discretion, and Licensee may not settle or compromise any such claim, action, or allegation, except with the prior written consent of Perforce. Licensee shall give Perforce such assistance and information as Perforce may reasonably require to settle or oppose any such claims.

5.2 In the event any such infringement claim, action, or allegation is brought or threatened, and in addition to the Perforce's obligations in Section 5.1, Perforce may, at its sole option and expense: (a) procure for Licensee the right to continue use of the Licensed Software or the Documentation or the infringing portion thereof; or (b) modify, amend, or replace the Licensed Software or the Documentation, or the infringing part thereof, with other software or documentation having substantially the same or better capabilities, performance, and functionality. If neither of the foregoing is commercially practicable, in the sole determination of Perforce, Perforce shall refund the portion of the License Fees actually paid by Licensee and attributable to the infringing portion of the Licensed Software or the Documentation, less a pro rata amount reflecting the portion of the then-current applicable License Term that has elapsed at such time. In the event any infringement claim, action, or allegation is brought or threatened and upon the written request of Perforce, Licensee shall immediately cease using the infringing portion of the Licensed Software or the Documentation and will remove the same from its system and so certify in writing to Perforce.

5.3 THE FOREGOING OBLIGATIONS SHALL NOT APPLY TO THE EXTENT THE INFRINGEMENT ARISES AS A RESULT OF: (A) MODIFICATIONS TO THE LICENSED SOFTWARE MADE BY ANY PARTY OTHER THAN PERFORCE OR PERFORCE'S AUTHORIZED REPRESENTATIVE; (B) FAILURE OF LICENSEE TO INSTALL AN UPDATE, NEW RELEASE, OR PATCH, WITHIN A REASONABLE TIME OF BEING PROVIDED ACCESS TO THE SAME BY PERFORCE IF SUCH INFRINGEMENT WOULD HAVE BEEN AVOIDED BY SUCH INSTALLATION; OR (C) USE OF THE LICENSED SOFTWARE OTHER

THAN IN ACCORDANCE WITH THIS AGREEMENT. THIS SECTION 5 STATES THE ENTIRE LIABILITY OF PERFORCE WITH RESPECT TO INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, OR OTHER PROPRIETARY RIGHT.

6 LIMITATION OF LIABILITY

6.1 Exclusion of Indirect Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER, OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF THE OTHER PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

6.2 Limitation on Direct Damages. EXCEPT FOR DAMAGES CAUSED BY FRAUD, INTENTIONAL MISREPRESENTATION, A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS, LICENSEE'S VIOLATION OF PERFORCE'S INTELLECTUAL PROPERTY RIGHTS, OR INFRINGEMENT CLAIMS UNDER SECTION 5 HEREOF, IN NO EVENT SHALL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT OR RELATING TO THE SUBJECT MATTER HEREOF FOR ALL CLAIMS, COSTS, LOSSES, AND DAMAGES EXCEED THE AMOUNT PAID OR PAYABLE IN THE PRECEDING TWELVE MONTH PERIOD BY LICENSEE TO PERFORCE PURSUANT TO THIS AGREEMENT FOR THE LICENSED SOFTWARE.

6.3 Application of Exclusions and Limitations. The foregoing limitations and exclusions of liability shall apply even if a Party had been advised of the possibility of any such costs, losses, or damages or knew or ought to have known of such costs, losses, or damages and shall apply regardless of whether the action arose in contract, including, without limitation, from a fundamental breach, or breach of a condition, fundamental term or warranty, or in tort (including, without limitation negligence), or otherwise. The foregoing provisions limiting the liability of Perforce shall also apply to its officers, directors, employees, and agents as trust provisions for the benefit of such officers, directors, employees, and agents and shall be enforceable by such parties as trust beneficiaries.

7 TERM; TERMINATION

7.1 The term of this Agreement with respect to the Licensed Software shall be the license term for such Licensed Software as set forth on the applicable Transaction Document (the "License Term"), including any Renewal Terms, or, if no term is specified on such Transaction Document, the term of this Agreement will be one (1) year. Unless otherwise agreed in writing by the Parties, this Agreement will terminate immediately on the expiration or termination of all of the License Terms under all Transaction Documents.

7.2 Notwithstanding Section 7.1 above, either Party may terminate this Agreement and any Transaction Documents in the event that the other Party breaches the terms, conditions, and/or obligations under the Agreement and/or a Transaction Document. Intent to terminate will be made by a written notice setting forth the details of the breach. Termination will 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.

7.3 Perforce will have the right to terminate this Agreement effective immediately if: (a) Licensee fails to meet its payment obligations under Section 3 of this Agreement, unless Licensee has corrected such material breach within ten (10) days of Licensee's receipt of written notice of such breach from Perforce; (b) Licensee's violation of the restrictions set forth in Section 2 of this Agreement; or (c) Licensee made an assignment of this Agreement in violation of Section 9.1 of this Agreement.

7.4 Either Party will have the right to terminate this Agreement and all Transaction Documents effective immediately if: (a) a petition of bankruptcy is granted against the other Party; (b) the other Party makes an assignment for the benefit of creditors; (c) the other Party admits to being unable to meet its obligations as they come due; or (d) a petition of bankruptcy is filed by or against the other Party and if such petition is not dismissed by the bankruptcy court within sixty (60) days after its filing. A Party's intent to terminate this Agreement and all Transaction Documents under this Section 7.4 will be made by a written notice to the other Party.

7.5 If the Agreement and/or any Transaction Document is terminated prior to its natural expiration, then all licenses granted by Perforce shall immediately terminate as of the Agreement termination date, unless otherwise agreed by the Parties in writing, and except as provided in Section 7.2 above. Licensee will immediately (a) discontinue all use of the Licensed Software and Documentation, (b) destroy the original and all copies of the Licensed Software and the Documentation in its possession or control, and (c) provide written confirmation to Perforce of its

compliance with the foregoing requirements. Licensee agrees to certify, in writing, compliance with the foregoing undertakings upon Perforce's request. Termination shall be without prejudice to the rights and remedies of either Party that may have accrued prior to such termination. For the avoidance of doubt, and except in the case of breach of this Agreement and/or a Transaction Document by Perforce, Licensee shall not be entitled to a refund of any prepaid fees upon termination of the Agreement and/or any Transaction Document, and Perforce will not release Licensee from its obligations to pay Perforce all fees that are due and owing under this Agreement and any Transaction Document prior to its termination.

7.6 Any provision of this Agreement that expressly, by implication or necessity, contemplates performance or observance subsequent to the termination of this Agreement will survive termination or expiration of the Agreement and will continue in full force and effect, including any outstanding payment obligations. Notwithstanding the foregoing, all licenses granted hereunder shall terminate pursuant to [Section 7.5](#) above.

8 CONFIDENTIALITY

8.1 By virtue of this Agreement, one Party ("Recipient") may obtain, learn, develop, or have access to information that is confidential to the other Party ("Discloser"). For purposes of this Agreement, "Confidential Information" will include any information that the Discloser identifies or marks as confidential or proprietary at the time of disclosure, or that reasonably appears to be proprietary or confidential in nature because of legends or other markings, the circumstances of disclosure, or the nature of the information itself. "Confidential Information" will also include, but is not limited to, the Licensed Software, Documentation, code, technology, know-how, ideas, algorithms, testing procedures, structure, interfaces, specifications, bugs, problem reports, any information or reports generated from the Licensed Software, analysis and performance information, results of benchmark tests and information obtained through and evaluation of the Licensed Software, the terms of this Agreement, including pricing terms, and other technical, business, product, marketing and financial information, plans, and data.

8.2 The Recipient will protect the Discloser's Confidential Information by using the same degree of care, but no less than a reasonable degree of care, as the Recipient uses to protect its own Confidential Information of a like nature against unauthorized use, disclosure, or publication, and will limit access to Confidential Information of the Discloser to those of its employees, contractors, and agents who need such access for purposes consistent with this Agreement and who are bound by law or contract to restrictions no less stringent than those herein.

8.3 The confidentiality obligations set forth in this [Section 8](#) do not apply to Confidential Information that: (a) is generally known to the public through no improper action by Recipient or its Third-Party Agents; (b) was legitimately in Recipient's or its Third-Party Agent's possession prior to its disclosure by Discloser; (c) becomes available to Recipient, or to its Third-Party Agents, on a non-confidential basis from a source other than the Discloser or the Discloser's Third-Party Agents, provided that such source is not acting in violation of a confidentiality agreement with Discloser or with any of the Discloser's Third-Party Agents, or is otherwise prohibited from transmitting the information to the Recipient or to the Recipient's Third-Party Agents by a contractual, legal, or fiduciary obligation owed to the Discloser or to any of the Discloser's Third-Party Agents; or (d) was or is independently developed by or for Recipient or by the Recipient's Third-Party Agents without use of or reference to the Confidential Information.

8.4 If the Recipient is required to disclose any Confidential Information of the Discloser to a tribunal, court, or governmental or regulatory agency, then, unless the Recipient is restricted by any law or order, the Recipient will provide the Discloser written notice in advance of the disclosure to permit the Discloser to obtain protective orders maintaining the confidentiality of the Confidential Information. At the Discloser's request and expense, Recipient agrees to provide reasonable assistance if the Discloser wishes to contest the disclosure.

9 GENERAL

9.1 Neither Party may assign this Agreement, in whole or in part, without the express written consent of the other Party. With respect to the Licensee, an assignment of this Agreement will be deemed to have occurred if Licensee is party to a merger, restructuring, reorganization, sale, or transfer of all or substantially all of a Licensee's assets, or a divestiture or sale of a business unit or division of the Licensee that makes use of the Licensed Software licensed under this Agreement. An assignment or transfer not conforming to the provisions of this [Section 9.1](#) shall be null and void.

9.2 This Agreement and any claim, cause of action or dispute arising out of, or related thereto, shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of Licensee's country of origin or where Licensee uses the licenses from, without giving effect to any conflict of law principles, which would

result in the application of the laws of a jurisdiction other than the State of Delaware. Any dispute, claim, or controversy arising out of, connected with, or relating to this Agreement, the Licensed Software, or any use related thereto, will be submitted to the sole and exclusive jurisdiction of the competent court located in State of Delaware. The 1980 United Nations Convention on Contracts for the International Sale of Goods, any state's enactment of the Uniform Computer Information Transactions Act, and the United Nations Convention on the Limitation Period in the International Sale of Goods, and any subsequent revisions thereto, do not apply to this Agreement.

9.3 Neither Party shall disclose the existence of this Agreement, its terms, or conditions, the occurrence of discussions under this Agreement, or the business relationship considered by the Parties hereunder, unless agreed in writing by the other Party. Neither Party shall issue publicity or general marketing communications concerning the other Party without the other Party's prior written approval.

9.4 No amendment or modification of this Agreement, nor any waiver of any rights hereunder, will be effective unless assented to in a writing signed by authorized representatives of both Parties. Any such waiver will be narrowly construed to apply only to the specific provision and under the specific circumstances for which it was given and will not apply with respect to any repeated or continued violation of the same provision or any other provision. No other course of dealing between or among any of the Parties to this Agreement or any delay in exercising any rights pursuant to this Agreement will operate as a waiver of any rights of any Party to this Agreement. Except as expressly provided in this Agreement, no other party who is not a Party to this Agreement will have any right or obligation pursuant to this Agreement.

9.5 The parties acknowledge that money damages may not be an adequate remedy in the event of actual or threatened breach of the obligations and/or undertakings hereunder. Therefore, in addition to any other remedies available hereunder, by law or otherwise, either Party will be entitled to seek and obtain injunctive relief and/or any other appropriate decree of specific performance or any other appropriate equitable relief.

9.6 All notices provided for in this Agreement will be in writing and will be personally delivered, sent by reputable overnight courier service (delivery charges prepaid), or sent by registered or certified mail, postage prepaid, return receipt requested, to any Party at the address specified in the introductory paragraph to this Agreement. All notices, demands, and other communications hereunder may be given by any other means (including electronic mail), but will not be deemed to have been duly given unless and until the intended recipient actually receives it. Notice given by electronic mail will be deemed to have been given when sent so long as no electronic notice is delivered to the sending Party indicating that the electronic mail could not be delivered.

9.7 The pursuit by either Party of any remedy to which it is entitled at any time will not be deemed an election of remedies or waiver of the right to pursue any other remedies to which it may be entitled.

9.8 The parties will be independent contractors under this Agreement, and nothing herein will constitute either Party as the employer, employee, agent, or representative of the other Party, or both parties as joint venturers or partners for any purpose.

9.9 If any provision of this Agreement is held invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, and the enforceability of the remaining provisions of this Agreement will not be impaired thereby. To the extent any provision cannot be enforced in accordance with the stated intentions of the parties, such provision will be deemed not to be a part of this Agreement.

9.10 Neither Party will be deemed to be in breach of this Agreement, nor otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement arising out matters beyond the reasonable control of a Party, including, war, strikes, lock outs, or industrial disputes (except in relation to a Party's own workforce), outbreak of hostilities, riots, civil disturbances, pandemics, epidemics, or quarantines, acts or orders of any government department or constituted body, fire, explosion, earthquake, flood, acts of God, or acts of terrorism; *provided, however*, that no event will be treated as beyond the reasonable control of a Party if it is attributable to a willful act or omission by such Party, or any failure by such Party to take reasonable precautions or any failure to mitigate or take reasonable steps to overcome such event. If the performance of the impacted Party is prevented for a period of thirty (30) days or more, the Party not affected may terminate this Agreement upon providing seven (7) days' advance written notice.

9.11 This Agreement, including all Exhibits and Transaction Documents, constitutes the sole and entire agreement of the parties with respect to the subject matter hereof and supersedes and cancels any prior and contemporaneous oral or written proposals, promises, or agreements. Any reference to the Agreement will expressly

include the Exhibits and Transaction Documents. There are no promises, covenants, or undertakings other than those expressly set forth in this Agreement. For purposes of clarity, no terms, or conditions, including any pre-printed or boilerplate terms and conditions, stated in any Licensee purchase order, or in any other Licensee documentation, will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void and of no force and effect.

9.12 Perforce and Licensee have read this Agreement and agree to be bound by its terms, and the authorized representatives of each Party have affixed their signatures on the signature page below. This Agreement, and any amendments thereto, may be executed in one or more counterparts each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties may transmit their signatures via scanned PDF, e-signature, or other electronic signature tools with the same effect as if the parties had provided each other with original signatures.

10 **EVALUATION LICENSE.** The terms of this Section 10 solely apply to installations of the Licensed Software in a non-production environment for a limited time period under the terms and conditions of this License Agreement, during which an Authorized User may evaluate the Licensed Software for use in support of Licensee's internal business operations (such Software, the "Evaluation Software"). The terms of Sections 2.1, 2.3, 2.4, 2.5, 2.6, 3, 4, and 6 shall not apply to the parties' rights and obligations with respect to Evaluation Software.

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