



PerfectForms™ – End-User License Agreement

Contents

1. DEFINITIONS.....	4
2. GRANT OF RIGHTS.....	4
3. FEES.....	5
4. CONFIGURATION.....	5
5. INTELLECTUAL PROPERTY	5
6. TERM AND TERMINATION	7
7. EFFECT OF TERMINATION	8
8. WARRANTIES.....	9
9. LIMITATION OF LIABILITY	9
10. GENERAL	10
11. NOTICES	10
12. ELECTRONIC AGREEMENTS.....	11
13. SOFTWARE OUTSOURCE LICENSING POLICY	11

**PERFECTFORMS END-USER SOFTWARE LICENSE AGREEMENT
FOR SOFTWARE PROVIDED BY PERFECTFORMS UNDER THIS LICENSE ONLY**

IMPORTANT-READ CAREFULLY

The SOFTWARE contains valuable intellectual property of PERFECTFORMS and licensors of PERFECTFORMS and is protected by international copyright and other intellectual property laws and treaties. This SOFTWARE is licensed only, not sold.

IF YOU DO NOT AGREE WITH THE CONDITIONS SET OUT IN THIS LICENSE AGREEMENT DO NOT CONTINUE WITH THE INSTALLATION OF THE SOFTWARE. IF YOU CLICK ON THE "I ACCEPT" BUTTON BELOW YOU WILL BE DEEMED TO HAVE READ, UNDERSTOOD, ACCEPTED AND BE BOUND BY ALL THE TERMS OF THIS LICENSE.

YOU ACKNOWLEDGE AND AGREE THAT REGULATIONS 9 AND 11 OF THE ELECTRONIC COMMERCE (EC DIRECTIVE) REGULATIONS 2002 DO NOT APPLY TO THIS LICENSE AGREEMENT AND THAT FOR THE PURPOSES OF SUCH REGULATIONS YOU ARE NOT A CONSUMER AS DEFINED THEREIN.

IN THE EVENT THAT YOU DO NOT ACCEPT ANY LICENSE AGREEMENT ACCOMPANYING ANY SOFTWARE, YOU ARE NOT AUTHORIZED TO COPY, INSTALL, OR OTHERWISE USE ANY PART OF SUCH SOFTWARE.

Subject to and conditional upon the person, company or other legal entity (LICENSEE) on whose personal computer or computer network or hardware and storage facilities the SOFTWARE is being installed having paid in full the license fee for the SOFTWARE to PERFECTFORMS or an accredited PERFECTFORMS Partner, PERFECTFORMS hereby grants to the LICENSEE a non-transferable non-exclusive conditional license to use the SOFTWARE and Licensed Material for LICENSEE's own internal purposes only upon the terms and conditions set out herein. Any electronic or printed license agreement subsequently entered into by LICENSEE with PERFECTFORMS with respect to the Software shall supersede the license terms and conditions set out herein.

THIS LICENSE GRANTS LIMITED NON EXCLUSIVE RIGHTS ONLY TO THE LICENSEE TO POSSESS AND USE THE SOFTWARE. THE LICENSEE MUST ENTER INTO A FURTHER AGREEMENT WITH PERFECTFORMS OR AN ACCREDITED PERFECTFORMS PARTNER TO BE ENTITLED TO DELIVERY OF SUPPORT, MAINTENANCE, TRAINING OR ANCILLARY SERVICES.

1. DEFINITIONS

- 1.1 "Commencement Date" means the date any Software component is installed on any computer or computer network or hardware and storage facilities of the LICENSEE or the date the LICENSEE clicks on the "I Accept" button to accept this Agreement whichever is the earlier.
- 1.2 "Configuration" means to configure the operation of the Software pursuant to clause 4 to perform certain predetermined functions offered by the Software or to operate or manipulate third party software products to meet the specific and reasonable requirements of the LICENSEE and to create accompanying documentation.
- 1.3 "Evaluation Purposes" means the use of the Software and Licensed Material for the purposes of deciding whether or not to purchase a commercial production license to use the Software and Licensed Material or for the purposes of attempting to complete a course or activity under any CSL Partner Program.
- 1.4 "Evaluation Period" means 2 weeks from the Commencement Date or any other period that the LICENSEE is licensed in writing by PERFECTFORMS to possess and use Software under this Agreement for Evaluation Purposes.
- 1.5 "License Fee" means the fee paid (either on a periodic or perpetual basis) for the license of the Software under this Agreement by the LICENSEE to PERFECTFORMS or an accredited PERFECTFORMS Partner.
- 1.6 "Licensed Material" means the latest version from time to time of any user manuals, specifications and other documentation relating to the Software published by PERFECTFORMS from time to time in any printed or electronic form.
- 1.7 "Software" means the PERFECTFORMS software application accessed by reason of acceptance of this Agreement and any updates, upgrades, supplements, add-on components or customised or replacement software provided to the LICENSEE by PERFECTFORMS or an accredited PERFECTFORMS partner with respect to such software and any related processes specified in the Licensed Material as supplied to the LICENSEE by PERFECTFORMS or an accredited PERFECTFORMS partner.

2. GRANT OF RIGHTS

In consideration of and for such periods in respect of which the LICENSEE shall have paid the License Fee to PERFECTFORMS or an accredited PERFECTFORMS partner and subject to PERFECTFORMS's Software outsource licensing policy in clause 13, PERFECTFORMS hereby grants to the LICENSEE a non-transferable non-exclusive conditional license to use the Software and Licensed Material for its own internal use, to install the Software for commercial production on one physical or virtual server only at any one time and to configure the Software in accordance with clause 4.

Limited Software Evaluation Rights

In the event that PERFECTFORMS provides the LICENSEE with the Software and Licensed Material for Evaluation Purposes, then for the Evaluation Period only.

- 2.1 PERFECTFORMS hereby grants to the LICENSEE a non-transferable non-exclusive conditional limited license to use the Software and Licensed Material for Evaluation Purposes only.
- 2.2 PERFECTFORMS shall have no obligation or liability to provide support or maintenance or other services for Software or any training services under this Agreement.
- 2.3 THE SOFTWARE IS DEEMED ACCEPTED BY LICENSEE FOR ANY AND ALL EVALUATION PURPOSES AND IN ADDITION TO, AND WHERE APPLICABLE IN SUBSTITUTION FOR, THE LIABILITY DISCLAIMERS, EXCLUSIONS AND LIMITATIONS SET OUT IN CLAUSE 9, PERFECTFORMS PROVIDES THE SOFTWARE AND LICENSED MATERIALS AND ANY (IF ANY) SUPPORT SERVICES RELATED TO THE SOFTWARE ("SUPPORT SERVICES") AS IS AND WITH ANY AND ALL DEFICIENCIES AND FAULTS AND THE LICENSEE ACCEPTS UNCONDITIONALLY THAT THE ENTIRE RISK AS TO THE QUALITY, OR ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE UNDER THIS AGREEMENT AND ANY SUPPORT SERVICES, REMAINS WITH THE LICENSEE.

3. FEES

- 3.1 Unless otherwise stated or agreed all License Fees are payable in advance of the license period to which they relate. Invoices with respect to any license period will be issued as near as practicable to one calendar month prior to the commencement of such period. Any other services PERFECTFORMS may agree to provide to the LICENSEE under this Agreement shall be invoiced when delivered or on a monthly basis, at the discretion of PERFECTFORMS.
- 3.2 Unless otherwise stated all sums payable by the LICENSEE under this Agreement shall be due within 30 days of invoice. Interest on late payment shall be payable at a rate of 2% over the delinquent month/months LIBOR rate. Unless otherwise stated all fees and other sums payable hereunder are as stated exclusive of VAT and any other duties.

4. CONFIGURATION

Following such training as may be specified by PERFECTFORMS trained employees or contractors of the LICENSEE may configure the Software in accordance with such procedures as are specified from time to time for such Software by PERFECTFORMS. Any Configuration of Software in accordance with this clause 4 will become part of the Software and will continue to be subject to all the terms of this Agreement.

5. INTELLECTUAL PROPERTY

- 5.1 The LICENSEE agrees and acknowledges that this Agreement confers on it no rights in the Software or the Licensed Materials other than as are expressly granted by this Agreement and all copyright trademarks and other intellectual property rights in the Software, Licensed Material and any permitted Software Configuration or customisation made by the LICENSEE, PERFECTFORMS or accredited PERFECTFORMS partner are the exclusive property of PERFECTFORMS.
- 5.2 The LICENSEE shall not
- 5.2.1 Save as provided in clause 5.5 below copy or translate the whole or any part of the Software or the Licensed Material
 - 5.2.2 Save as provided in clause 4 modify, merge or combine the whole or any part of the Software or the Licensed Material with any other software or documentation
 - 5.2.3 Assign transfer sell charge or otherwise deal in or encumber the Software or the Licensed Materials nor use on behalf of or make available the same to any third party
 - 5.2.4 Reverse engineer decompile or disassemble the whole or any part of the Software from object code into source code save as may be required to be permitted by any law applicable to this Agreement
 - 5.2.5 Without the prior written approval of PERFECTFORMS, such approval to be not unreasonably withheld or delayed, disclose to any disaster recovery company the Software and/or the Licensed Material in the event of a loss of data and/or operation of the LICENSEE's computer system requiring such assistance.
- 5.3 The LICENSEE shall
- 5.3.1 Keep confidential the Software and the Licensed Materials and limit access to the same to those of its employees, agents and sub-contractors who either have a need to know or who are engaged in the use of the Software and the Licensed Material permitted by this Agreement
 - 5.3.2 Reproduce all copyright and trademark notices on each copy of the Software and the Licensed Material
 - 5.3.3 Maintain an up-to-date record of the number of copies of the Software and the Licensed Material and their location and upon request forthwith produce such record to PERFECTFORMS and
 - 5.3.4 Without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights in the Software and the Licensed Material in its possession from any access use copying or disclosure not authorized by this Agreement.

- 5.4 The LICENSEE shall inform all relevant employees, agents and sub-contractors that the Software and the Licensed Material constitute valuable confidential information and the intellectual property of PERFECTFORMS and the LICENSEE shall take all such steps as shall be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 5.
- 5.5 The LICENSEE agrees that it will not make, or have made, any copies of the Licensed Materials or any part thereof or any copies of the Software or any part thereof other than copies which are necessary and used for back-up purposes.
- 5.6 The LICENSEE agrees to use the Software only as provided in this Agreement and that it will not use the Software to develop similar systems or for any other purpose except that it's trained employees or contractors may make such configurations to the Software as are permitted under clause 4.
- 5.7 To assist with the development and to enhance the competitiveness of PERFECTFORMS's Software and services, LICENSEE may from time to time provide suggestions, comments or other feedback ("Suggestions") to PERFECTFORMS with respect to such Software and services. LICENSEE acknowledges and agrees that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by LICENSEE, shall not, absent a separate written agreement, create any confidentiality obligation on the part of PERFECTFORMS. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, PERFECTFORMS shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit Suggestions as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.
- 5.8 The provisions of this clause 5 shall survive any termination or expiry of this Agreement.

6. TERM AND TERMINATION

- 6.1 The license granted by this Agreement shall commence on the Commencement Date and shall remain in full force thereafter only during such license periods in respect of which the License Fee shall have been paid in full unless and until terminated under clause 6.2.
- 6.2 This Agreement may be terminated
 - 6.2.1 Forthwith by PERFECTFORMS at any time after the Commencement Date that no Software license is in existence under this Agreement
 - 6.2.2 Forthwith by PERFECTFORMS if the LICENSEE fails to make any payment on the due date therefore and payment shall not have been made within 7 days' of a written request for the same

6.2.3 Forthwith by either party if the other commits any material breach of any term of this Agreement (other than one falling within clause 6.2.2 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 14 days' of a written request to remedy the same or

6.2.4 Forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction)

6.3 Any termination of this Agreement pursuant to this clause 6 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party, nor the coming into or continuance in force of any clause which is expressly or by implication intended to come into or continue in force on or after such termination.

7. EFFECT OF TERMINATION

7.1 In the event of the termination of this Agreement for any reason whatsoever or the LICENSEE failing to renew the Software license granted under this Agreement upon the expiry of any license period, the LICENSEE shall

7.1.1 Within 7 days of termination delete the Software from the LICENSEE's hardware and its storage facilities

7.1.2 Within 7 days of termination return to PERFECTFORMS or an accredited PERFECTFORMS partner or otherwise destroy all other copies of the Software and Licensed Materials

7.1.3 If requested by PERFECTFORMS provide a certificate signed by a duly authorized officer of the LICENSEE that the LICENSEE has complied with its obligations under clauses 7.1.1 and 7.1.2 and

7.1.4 Forthwith pay any monies due to PERFECTFORMS or to become due at a later date.

7.2 Save only as expressly provided otherwise in this Agreement, no part of the License Fee or other fees paid under this Agreement shall be repayable on termination of this Agreement for any reason.

8. WARRANTIES

- 8.1 PERFECTFORMS warrants and represents that it has the right to license the Software as provided in this Agreement.
- 8.2 Notwithstanding any other provision of this Agreement PERFECTFORMS does not warrant that use of the Software will meet the LICENSEE's data processing requirements nor that the operation of the software will be uninterrupted or error-free.

9. LIMITATION OF LIABILITY

- 9.1 SUBJECT AS OTHERWISE PROVIDED IN CLAUSE 8, ALL CONDITIONS, DUTIES, WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE IN RELATION TO THE SOFTWARE OR ITS MAINTENANCE INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF RELIABILITY OR AVAILABILITY, OF ACCURACY OR COMPLETENESS, OF RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, OF LACK OF VIRUSES, OF LACK OF NEGLIGENCE, OF TITLE, OF QUIET ENJOYMENT, OF QUIET POSSESSION, OF CORRESPONDENCE TO DESCRIPTION, OF NON-INFRINGEMENT, WITH REGARD TO THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, OR RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.
- 9.2 SUBJECT AS OTHERWISE PROVIDED IN CLAUSES 8 AND 9.3 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, PERFECTFORMS SHALL BE UNDER NO LIABILITY TO THE LICENSEE FOR ANY LOSS, DAMAGE OR INJURY, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO, LOSS OF PROFIT OR CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH, REASONABLE CARE OR NEGLIGENCE AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE LICENSED MATERIAL, THE PROVISION OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, HOWSOEVER ARISING, AND WHETHER OR NOT CAUSED BY THE TORT (INCLUDING NEGLIGENCE), FAULT, STRICT LIABILITY, BREACH OF CONTRACT OR WARRANTY OR MISREPRESENTATION OF PERFECTFORMS ITS EMPLOYEES OR AGENTS, EVEN IF PERFECTFORMS SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGE OR INJURY, SAVE THAT PERFECTFORMS SHALL ACCEPT LIABILITY WITHOUT LIMIT FOR DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF PERFECTFORMS.
- 9.3 In each year of this Agreement PERFECTFORMS's total aggregate liability for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the License Fee (if any) received by PERFECTFORMS in the 12 months prior to the event giving rise to liability. The LICENSEE releases PERFECTFORMS from all obligations, liabilities, claims or demands in excess of this limitation and acknowledges and agrees that other parts of this Agreement rely upon the inclusion of this section and the resulting allocation of risks. If the LICENSEE has acquired the Software in a jurisdiction that does not allow the exclusion or limitation of incidental or

consequential damages, to the extent only that such provisions are contrary to the laws of such jurisdiction, the above limitation or exclusion may not apply to such LICENSEE.

- 9.4 PERFECTFORMS shall have no liability of any nature whatsoever for Configurations or modifications made to the Software by the LICENSEE or any third party whether or not made in accordance with clause 4.

10. GENERAL

- 10.1 Save to the extent required by the laws of California and notwithstanding any other provision in this Agreement PERFECTFORMS gives no warranties and shall have no liability of any nature whatsoever for third party software supplied to the LICENSEE by PERFECTFORMS or any accredited PERFECTFORMS partner.
- 10.2 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
- 10.3 Subject to PERFECTFORMS's Software outsource licensing policy in clause 13, the LICENSEE shall not assign, transfer, charge or make over or purport to assign, transfer, charge or make over this Agreement or any of its rights or obligations hereunder or any part thereof without prior consent of PERFECTFORMS. This Agreement does not create any right enforceable by any person not a party to it.
- 10.4 This Agreement will be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, and disagreements arising under this Agreement. PERFECTFORMS acknowledges and agrees that any rights, claims, and remedies against the STATE or its employees arising under this Agreement shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. § 9-8-101 - 407.
- 10.5 PERFECTFORMS reserves the right and LICENSEE acknowledges and agrees that PERFECTFORMS may unilaterally make reasonable changes to these terms and conditions provided that PERFECTFORMS gives the LICENSEE not less than one calendar months' notice of such changes.

11. NOTICES

Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or by facsimile or email to the address of the other party set out in this Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours

after posting and (if sent by facsimile or email) upon the completion of transmission, provided that if sent by email such notice is confirmed as soon as practicable by any other form of notice.

12. ELECTRONIC AGREEMENTS

The LICENSEE acknowledges and agrees that

- 12.1 by accessing, using, receiving or downloading any Software and by making electronic transmissions to PERFECTFORMS in connection therewith this Agreement and any other license conditions attaching from time to time to the use of Software are legally binding upon it whether or not an authorized employee agent or contractor of the LICENSEE clicked on any electronic button or such similar links as may be designated by PERFECTFORMS to accept this Agreement or download any Software.
- 12.2 pursuant to any applicable statutes, regulations, rules, ordinances or other laws, THE LICENSEE ACCEPTS THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS AND OTHER RECORDS AND TO ELECTRONIC DELIVERY OF NOTICES, CONTRACTUAL TERMS, RECORDS OF TRANSACTIONS AND OTHER DATA INITIATED OR COMPLETED THROUGH ELECTRONIC MEANS WITH PERFECTFORMS and
- 12.3 the licensee hereby waives any rights or requirements under any statutes, regulations, rules, ordinances or other laws in any jurisdiction which require an original signature or delivery or retention or filing of electronic or non-electronic records.

13. SOFTWARE OUTSOURCE LICENSING POLICY

Subject to the conditions set out in this clause 13 at all relevant times being satisfied, PERFECTFORMS agrees that this Agreement shall be deemed to also apply to any company, organization or entity (an "Outsource Services Provider") to which the LICENSEE has entered into a contract to take possession of the Software and to outsource the operation, support and maintenance of the Software ("Outsource Services") for such period during which the LICENSEE is contracted to receive Outsource Services or for such periods in respect of which the LICENSEE shall have paid the License Fee to PERFECTFORMS or an accredited PERFECTFORMS partner (whichever period expires earlier) so that while the LICENSEE remains so contracted the Outsource Services Provider shall be entitled to use the Software in accordance with the terms and conditions of this Agreement (and then only for the sole purposes of providing Outsource Services to the LICENSEE).

Software Outsource Licensing Conditions

- 13.1 The LICENSEE and the Outsource Services Provider are at all times not in breach of the terms of this Agreement or any other agreement governing the use of the Software or with PERFECTFORMS.

- 13.2 Any additional services or charges incurred by PERFECTFORMS as a result of the LICENSEE so contracting with the Outsource Services Provider or the Outsource Services Provider providing Outsource Services shall be paid by the relevant party to PERFECTFORMS upon demand.
- 13.3 The LICENSEE shall give not less than 30 days prior written notice to PERFECTFORMS of any transfer of possession of the Software to an Outsource Services Provider and prior to such transfer the Outsource Services Provider shall, in a writing, confirm to PERFECTFORMS that it agrees that its possession and use of the Software shall be governed by this Agreement or, at PERFECTFORMS's sole discretion, by the terms of PERFECTFORMS's then current standard Software license agreement (the terms of which will be sent to the Outsource Services Provider upon request). All notices should be sent to PERFECTFORMS in accordance with clause 11.
- 13.4 The LICENSEE shall confirm to PERFECTFORMS in writing that it has in its possession at the time of transfer (and shall retain thereafter) no copies of the transferred Software other than backup copies.
- 13.5 The LICENSEE shall fully and unconditionally indemnify and keep so indemnified PERFECTFORMS against any loss damage costs and expenses arising from or incurred by reason of any failure of the Outsource Services Provider to comply with the terms and conditions of this Agreement (or such other agreement nominated by PERFECTFORMS under clause 13.3) or fulfil the duties of the LICENSEE there as if such Outsource Services Provider was a party thereto. Accordingly and for the purposes of this clause 13 only, references in this Agreement (or such other agreement nominated by PERFECTFORMS under clause 13.3) to the LICENSEE shall be deemed to be references to the Outsource Services Provider and the performance or discharge of any obligation by PERFECTFORMS there to either the Outsource Services Provider or the LICENSEE shall be in full satisfaction of such obligation to the other.