



POLARION SOFTWARE LICENSE AGREEMENT

All the provisions of these software license agreement terms and conditions ("Agreement") shall apply between you (as "Customer") and Polarion Software ("Polarion").

Please read the following Agreement carefully. BY ACCESSING, DOWNLOADING OR USING THIS POLARION SOFTWARE ("**SOFTWARE**"), YOU, YOUR EMPLOYEES, AGENTS, AND CONTRACTORS, AND ANY OTHER ENTITY ON WHOSE BEHALF YOU ACCEPT THESE TERMS ("CUSTOMER") ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THE TERMS OF THIS POLARION SOFTWARE LICENSE AGREEMENT (THE "**AGREEMENT**"). IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ACCESS, DOWNLOAD OR USE THE SOFTWARE.

1 SOFTWARE LICENSE

1.1 Software

The Software, including but not limited to the code, updates, sample programs, license keys, associated files and documentations (collectively, the "Software"), is owned by Polarion and is protected by international copyright and other laws.

The Software is licensed to you, not sold, and may be used by you only in accordance with the terms and conditions of this Agreement.

Any reproduction or redistribution of the Software not in accordance with this Agreement is expressly prohibited by law, and may result in severe civil and criminal penalties. Violations will be prosecuted to the maximum extent possible.

1.2 License Grant and Restrictions

Subject to these terms and conditions, Polarion grants Customer a world-wide, nontransferable and nonexclusive license to use the Software together with the documentation related hereto for the license fee paid by the Customer, without deduction or offset.

Customer shall not deliberately or negligently, nor shall it allow others to: (i) modify, translate, de-compile, disassemble or otherwise reverse engineer the Software or attempt to discover its source code, algorithms, license restrictions, architecture or structure; (ii) distribute, disclose, sell, rent, lease, display, loan,



publish, transfer, or otherwise disseminated the Software to any third party; or (iii) use the Software except as expressly authorized herein.

Customer has no right to sub-license or assign the license granted hereunder to any party whatsoever. Customer shall not copy the Software (except for back up or archival purposes only) without the express written prior permission of Polarion. If Customer outsources any of its work, it will not provide copies of the Software to outsource contractors without the express written permission of Polarion.

To safeguard the Software, Customer shall take at least the same steps it would take to protect its own valuable properties but, in any event, those steps which would reasonably be taken in the industry to protect valuable properties such as the Software. Customer shall further ensure that all persons authorized to have access to the Software do not take any action which would be prohibited by this Agreement if taken by Customer.

All rights not expressly granted to Customer in this Agreement are hereby reserved by Polarion.

1.3 Software Delivery

Polarion shall provide via internet delivery (electronic software distribution) to Customer one (1) executable copy of the Software including copies of the documentation, and alphanumeric code(s) referred to as license keys which are necessary to enable, or "turn on", the Software for use during the term of a license.

Delivery date of the Software from Polarion to Customer or confirmation of Software payment receipt is the Effective date of this Agreement and shall be made part of this Agreement and incorporated hereto.

1.4 Named User License

If Customer has purchased a Named User License, such license authorizes Customer to load and run the current version of the Software on one (1) server. This license is valid for one specific, unique person, who must be the named user. Customer must purchase a Named User License for each named user working with the Software. The total number of named users may not exceed the total number of Named User Licenses purchased by Customer.

1.5 Concurrent License

If Customer has purchased a Concurrent License, the Concurrent License authorizes Customer to load and run the current version of the Software on one (1) server. This license is counted in terms of concurrent users and is valid at Customer's authorized site only. Any number of users at Customer's site can use the software simultaneously from any computer at the Customer's site up to the number of Concurrent Licenses Customer purchased. If Customer owns a single Concurrent License, only one user at a time has access rights to the Software, although it may be used by any one user at Customer's authorized site.



1.6 Education License

Polarion offers licenses for educational use in colleges, universities, or recognized educational institutions as a part of educational instruction, assignments, or non-commercial research projects. The Education license may not be shared with or utilized by any person who is not an instructor, student, or employee at the colleges, universities, or recognized educational institutions. The Education License is annually renewed by the Customer. The Education License is a Named User License or Concurrent License subject to all the terms and conditions of above.

1.7 Open Source Project License

Polarion offers licenses for a qualified Open Source Project determined solely by Polarion. The Open Source license may not be shared with or utilized by any person who is not a member of the Open Source Project. The Open Source Project License is annually renewed by the Customer. The Open Source Project License is a Named User License or Concurrent License subject to all the terms and conditions of above.

1.8 Records and Audit

Customer agrees to maintain accurate records as necessary to verify Customer's compliance with this Agreement and the use restrictions on the Software contained herein. Upon provision by Polarion of at least ten (10) business days prior written notice, Customer shall provide to Polarion or its designated representative, access to such records solely in order to verify such compliance. If an audit reveals that Customer has exceeded the scope of its license (i) Customer shall pay the reasonable costs and expenses of such audit, and (ii) Customer shall pay for any such excess use (based on the license fees for the number of unauthorized users or licenses and the allocable software support and maintenance due for such) together with interest thereon at a rate of 1.5% per month, or the highest rate allowed by law, whichever is less. The unauthorized licenses will be thereafter included under software support and maintenance.

2 SOFTWARE

2.1 Ownership

Polarion represents that it either: (i) owns the Software and that it has the right to modify same and to grant Customer a license for its use, or (ii), in the case of proprietary software and/or databases belonging to others which are provided to Customer by Polarion in connection with the Software, the same are licensed or sublicensed to Customer pursuant to the terms and conditions of the applicable license(s) provided with same, and Polarion has the right to utilize the same in the Software and to sub-license its usage to Customer.

2.2 Title to Software

The Software and all copies thereof are proprietary to and are the property of Polarion or others who have licensed their proprietary information to Polarion for utilization and inclusion in the Software ("Licensors"), and title thereto remains with Polarion or its Licensors. Customer agrees that the Software contains proprietary



information, including trade secrets, know-how and confidential information as defined in Section 6 of this Agreement.

This Agreement does not grant to Customer any ownership rights in the Software or in any derivative work based in whole or in part upon the Software. Customer agrees that any derivative work based in whole or in part upon the Software shall be considered a "derivative work" for purposes of applicable law, and all rights thereto shall belong to Polarion. Customer agrees that neither it nor any of its employees, agents, contractors, consultants, or affiliated entities will claim any patent, copyright, trademark, service mark, or "moral rights" with respect to the Software or any work based in whole or in part upon it, nor will it challenge or attempt to defeat Polarion's rights with respect to the same. Customer shall not remove or change any notices of patents, copyrights, trademarks or other proprietary rights of Polarion or any other person or entity on the Software, on its documentation or any written material concerning it, or on any media containing the Software. Customer shall cause any copy of the Software properly made pursuant to this Agreement to bear all such notices as appear on the originals of the Software.

2.3 No Warranty

Save as provided below, Software is provided on an "as is" and "as available" basis without warranty, express or implied, of any kind or nature, including, but not limited to, any warranties of performance or merchantability or fitness for a particular purpose, including without limitation that Polarion does not warrant that the Software will be error-free, complete, or correct. Polarion provides evaluation copies of the Software so that Customers can assess the Software.

2.4 No Infringement

The Software will not infringe upon the rights of any third party. In the event of a claim of or action with regard to infringement, Polarion will defend any action at its own expense. If Customer is barred from using the Software because of infringement, or if it appears likely that such will occur, Polarion shall, at its expense and at its sole discretion, (a) procure for Customer the right to continue using the Software, (b) modify the Software so that it does not infringe upon the rights of third parties, or (c) refund to the Customer the Software license fee paid, at which time Customer shall cease use of the Software and return all copies of it to Polarion.

Polarion shall have no obligation to do any of the foregoing if the infringement or claim is the result of (i) use of the Software with equipment or other software not furnished by Polarion, and the infringement or claim results from such use; (ii) modification of alteration of the Software by Customer, and the infringement or claim results from such modification. Customer shall indemnify, save and hold harmless Polarion from any claim or infringement arising from work specified or designed by Customer. THE FOREGOING STATES POLARION'S ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT BY THE SOFTWARE OR ANY PART THEREOF OR ITS' OPERATION.



2.5 DISCLAIMER

POLARION MAKES AND CUSTOMER RECEIVES NO WARRANTY WITH RESPECT TO THE SOFTWARE, EXPRESS OR IMPLIED, EXCEPT THAT POLARION AGREES TO PASS THROUGH ANY WARRANTIES EXTENDED FOR THIRD-PARTY SOFTWARE, IF ANY, INCORPORATED INTO THE SOFTWARE.

CUSTOMER ASSUMES ALL RESPONSIBILITIES AND OBLIGATIONS WITH RESPECT TO ANY DECISIONS MADE OR ADVICE GIVEN AS A RESULT OF THE USE OF THE SOFTWARE, AND FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE CUSTOMER'S INTENDED RESULTS.

CUSTOMER UNDERSTANDS AND AGREES THAT THE SOFTWARE PROVIDED TO YOU UNDER THE TERMS OF THIS AGREEMENT ARE DELIVERED "AS IS" AND USE OF THE SOFTWARE IS AT YOUR OWN RISK. NO WARRANTIES OF ANY KIND OR NATURE ARE GIVEN, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS OR MERCHANTABILITY. IN NO EVENT WILL POLARION BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR DIRECT DAMAGES OR ANY LIABILITY IN CONTRACT OR TORT INCURRED BY OR UNDER THIS AGREEMENT. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH POLARION IN CONNECTION WITH THE SOFTWARE IS TO TERMINATE YOUR USE OF THE SOFTWARE WITHOUT ANY FURTHER LIABILITY ON THE PART OF POLARION.

3 TERM AND TERMINATION OF LICENSE

Either party may terminate this Agreement on written notice to the other party at any time, without prejudice to any other remedy it might have, if:

- a) The other party commits a material breach of this Agreement; or
- b) The other party becomes insolvent, is unable to pay its debts when due, or files for protection from its creditors, files a bankruptcy or insolvency proceeding, or has an involuntary bankruptcy or insolvency proceeding filed against it, or ceases to carry on business or a substantial part thereof.

Either party will have thirty (30) days to remedy a) or b) above. Termination in any event shall not relieve Customer of its obligations regarding the Confidentiality provisions contained in this Agreement.

4 PAYMENT TERMS

4.1 Payment Terms

Customer will pay the License Fee within thirty (30) days after the Effective Date. All payments are non-refundable. Prices shown do not include any duties, sales,



use, excise or similar taxes. All taxes shall be added to prices shown and Customer agrees to pay same. If Customer is exempt from paying such taxes or duties at the time such taxes or duties are levied or assessed, Customer can provide Polarion with tax exemption certificates and related documents as required by federal, state, or local laws or regulations to enable the Customer to obtain a tax or duty non-payment, deferral, refund or credit.

Customer orders are accepted only by a duly authorized officer of Polarion and executed by evidence of Software delivery, which date shall be made part of this Agreement and incorporated hereto. Customer agrees to make full payment of invoices in the manner agreed to in the invoice (such as currency in which payment is to be made, how payments by wire transfer or cheque are to be made, etc.) within thirty (30) days of the date of the invoice. In addition to other available remedies, a late payment service charge equal to 1.5% per month or the maximum charge allowed by applicable law, whichever is lower, shall be assessed on all amounts not paid when due. Customer agrees to pay all cost of collection, including attorney's fees, incurred by Polarion.

4.2 Customer Work or Purchase Orders

The utilization of Customer work orders, or purchase orders, or some other ordering form is offered as a convenience to Customer and as a means of allowing Customer to track their orders. Accordingly, Customer and Polarion agree that pre-printed terms on work or purchase orders shall be and are hereby objected to and rejected, that such shall be null and void and of no effect, and that they shall in no way alter or change the provisions of this Agreement, regardless of their purported effect under any law. Without limiting the generality of the foregoing, Polarion and Customer expressly reject the provisions of any law, statute or otherwise such as, for example, section 2-207(2) of the Uniform Commercial Code as promulgated and adopted in certain states of the United States, which would purport to add to, delete, or change any of the terms of this Agreement.

5 SUPPORT & MAINTENANCE

5.1 Services

No Software support or maintenance services are provided with the License Fee of the Software. Customer may purchase Software support and maintenance separately.

Software support and maintenance services will be the obligation of Polarion and will be provided by Polarion or its designee(s). Software Support and Maintenance includes Polarion's provisioning to Customer of Software updates made generally available to Customers from time to time, and online technical support (and where applicable, phone support) to one Customer-designated technical contact for the sole purpose of addressing technical issues relating to the use of the Software.



If Customer obtains an update of a version of the Software that Customer previously licensed, the update shall become part of the Software originally licensed from Polarion. Customer shall possess only a single license to use the Software with the incorporated update(s), not two separate licenses.

Any modifications not authorized by Polarion in writing made to the Software by Customer are prohibited. Correction by Polarion of difficulties or defects traceable to Customer's errors or systems changes shall be billed at Polarion's standard time and material charges.

5.3 Third Party Services

Consistent with the Software Warranties section of this Agreement, the sole responsibility of Polarion with respect to third party software is to pass through any warranties extended by the third-party.

5.4 Fees and Renewal

Software support and maintenance renewal fees are paid annually in advance. The initial or subsequent Software support and maintenance service may be renewed for additional 12, 24, or 36 months at the then-current rate for Software support and maintenance. Renewal periods commence upon the expiry date of the prior Software support and maintenance valid period, regardless of when the renewal is purchased.

If Customer terminates software support and maintenance services, or fails to pay the software support and maintenance services fees when they become due, then Polarion will not provide software support and maintenance services. In order to reinstate software support and maintenance services, Customer will pay Polarion the software support and maintenance services fees for the current year forward, plus any software support and maintenance services fees that were not paid for all prior years and/or portions of prior years. Without limiting any of the above provisions, in the event of termination as a result of Customer's failure to comply with any of its obligations under this Agreement, Customer shall continue to be obligated for any payments due.

Polarion may terminate software support and maintenance services at any time upon thirty (30) days notice, and in such event, Polarion will refund a pro rata portion of that year's software support and maintenance services fee received from Customer.

6 CONFIDENTIALITY

Both parties may receive or learn nonpublic information about the other, including but not limited, to information and documents about: the other's employees, vendors, customers, affiliates and competitors; information about the other's methods of doing business, finances, goods and services, research and development, analysis, discoveries, inventions, improvements, source code, flow



charts, logic diagrams, nonpublic data, databases and trade secrets; (collectively "Confidential Information"). Confidential information does not include: (i) information known to the recipient at the time of disclosure; (ii) information that is or becomes known to third parties not under an obligation of confidentiality; (iii) information learned from a third party not under an obligation of confidentiality; (iv) independently developed information; and (v) information required by law or regulation to be publicly disclosed, to the extent so disclosed. The Parties understand and acknowledge that the confidential information of each has been developed or obtained by the investment of significant time, effort and expense, and that the confidential information is a valuable, special and unique asset and thus has to be protected from improper disclosure.

Each party therefore agrees that: (i) it shall use the others Confidential Information only as required to perform the party's duties as set forth in this Agreement or any other binding agreement entered into by and between Polarion and Customer, and for no other purpose; (ii) it shall require its employees, contractors or other persons or entities who might gain access to the other party's Confidential Information as a part of his/its work for the first party to sign an agreement that he, she or it will be bound to confidentiality requirements with respect to the other party's Confidential Information that are at least as restrictive as those set forth here; (iii) it shall not disclose the other's Confidential Information without the other's express prior written consent; (iv) it shall take the same precautions to safeguard the other's Confidential Information as it takes to safeguard its own and, in any event, at least those precautions that are considered reasonable in the industry, and (v) it shall return or destroy the others Confidential Information upon request.

The obligations of this section shall survive any contract entered into for as long as such information remains Confidential Information.

7 GENERAL PROVISIONS

7.1 Commercial Software

The Software is intended for commercial or educational use by computer professionals.

7.2 Export Rules

Customer agrees to comply with all export laws and regulations of the United States or any other government and agrees not to export or re-export the Software or the License Key(s) in violation of any such laws or regulations. Customer also agrees to comply with all applicable laws and regulations with respect to the import into any country or the use in any country of the Software. Customer agrees to comply with all laws and regulations applicable to the use of the Software and its activities under this Agreement.

7.3 Force Majeure



Polarion shall not be liable for any failure of or delay in performance of orders or contracts directly or indirectly caused by fire, flood, accident, riot, war, labor trouble or strike, embargo, shortage of labor, material, fuel or power, lack of transportation, compliance with governmental requests, laws, orders, or regulations, or any other causes beyond Polarion's reasonable control.

7.4 Third Party Licenses

Software from time to time includes software developed by third parties. Polarion may from time to time add, remove or substitute third party software products that are included in the Software. An updated list of third party software is available at info@polarion.com for your convenience. If required by license, Source Code developed by third parties is available, please contact info@polarion.com in order to receive it. If required by third party license, relevant notices are provided in the software and/or the documentation.

7.5 Marketing Considerations

Customer grants Polarion the right to include the Customer's name as an organization that has purchased Polarion software in product promotional material. Customer can deny Polarion this right by submitting a written request via email to sales@polarion.com, requesting to be excluded from product promotional material. Confirmation of such denial, via reply email, will be provided within 30 days and Polarion shall make no further reference to the Customer product promotional material.

7.6 Independent Contractor

Polarion is an independent contractor and vendor of Customer, and nothing under this Agreement or the course of the parties' dealings shall establish a relationship of employer/employee, principal/general agent, master/servant, franchisor/franchisee, joint ventures, or partners.

7.7 Government Use. Customer understands and agrees that the Software has been developed at private expense and are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, as those terms are used in DFAR Section 227.7202 and FAR 12.212(b) or its successor provisions, as applicable, and the U.S. Government shall have "RESTRICTED RIGHTS", and no rights in or license to the Software other than those set forth in this Agreement.

8 GOVERNING LAW

- a) If Customer's place of incorporation/organization is located in the continents of North America, South America, Australia, Asia or islands in the Indian or Pacific Oceans the following provision shall apply: This Agreement is made and shall be construed in accordance with the substantive and procedural laws of the State of California and the United States of America (to the



extent they might apply). Without limiting the generality of the foregoing, the Parties specifically exclude any and all provisions of the U.N. Convention on Contracts for the International Sale of Goods from the substantive and procedural law concerning any proceeding between them. Venue for any proceeding brought in connection with this Agreement shall lie in the State or Federal Courts of San Francisco County, California.

- b) If Customer's place of incorporation or organization is located in any place in the world other than North America, South America, Australia, Asia or islands in the Indian or Pacific Oceans, the following provisions shall apply: This Agreement is made and shall be construed in accordance with the substantive laws of Switzerland. Legal domicile is Zurich, (excluding the U.N. Convention on Contracts for the International Sale of Goods).
- c) This Agreement constitutes the entire agreement between the Parties, and supersedes all prior representations and agreements, and can be modified only by a writing signed by officers of Polarion.
- d) If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.