

**IMPORTANT – READ CAREFULLY: THIS SOFTWARE LICENSE AGREEMENT (THE “LICENSE AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN YOU AND ROGUE WAVE SOFTWARE, INC., A PERFORCE COMPANY (“ROGUE WAVE”). IF YOU ARE INSTALLING THE LICENSED SOFTWARE FOR PERSONAL USE, THIS LICENSE AGREEMENT APPLIES TO AND BINDS YOU PERSONALLY. IF YOU ARE INSTALLING THE LICENSED SOFTWARE AS PART OF YOUR WORK FOR AN ORGANIZATION, THIS LICENSE AGREEMENT APPLIES TO AND BINDS SUCH ORGANIZATION. “LICENSEE” OR “YOU” AND “YOUR” REFER TO THE PERSON OR ENTITY THAT IS LICENSEE OF THE LICENSED SOFTWARE. BY INSTALLING, COPYING, OR OTHERWISE USING THE LICENSED SOFTWARE THAT ACCOMPANIES THIS LICENSE AGREEMENT, YOU OR SUCH ORGANIZATION AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT. IF YOU OR SUCH ORGANIZATION DOES NOT AGREE TO BE BOUND BY THIS LICENSE AGREEMENT, YOU MAY NOT USE, COPY OR INSTALL THE LICENSED SOFTWARE.**

## **1. DEFINITIONS.**

**1.1 “Licensed Software”** means the Rogue Wave software product(s), in source code or binary form, together with the user guides, reference manuals and other documentation accompanying such software or otherwise made available by Rogue Wave (collectively, the “**Documentation**”) for which Licensee has paid the applicable license fees, and any modified or updated versions of any of the foregoing made available to Licensee pursuant to Licensee’s purchase of Maintenance and Support under the same terms and conditions. Licensed Software does not include any third-party software products that may be embedded in or bundled with the Licensed Software, which products are separately licensed by the copyright holder.

**1.2 “Licensed User”** means an individual employed by or under contract to Licensee for whom Licensee has paid the applicable fees required to authorize such person to use the Licensed Software on Licensee’s behalf. Licenses for Licensed Users are priced on an individual (“**Individual User**”) or concurrent (“**Concurrent User**”) user, and on a platform specific and per product basis for designated virtual computing environments and/or physical computing devices, subject to applicable process limitations.

**1.3 “Maintenance and Support”** means the technical support and software maintenance services on the Licensed Software for which Licensee has paid the Maintenance and Support fees, either separately for perpetual licenses of the Licensed Software, or as included in the subscription license fee for the Licensed Software, as applicable.

**1.4 “Order”** means, collectively, a duly authorized quotation issued by Rogue Wave to Licensee that specifies the Licensed Software and may include other terms and conditions governing such Licensed Software (such as the fees and the term of the license) and a purchase order, if applicable, issued by Licensee to Rogue Wave in response to and reflecting such quotation (with no additional or different terms, unless such additional or different terms are expressly accepted by Rogue Wave in writing).

**2. LICENSE GRANT.** Subject to the terms and conditions of this License Agreement, and upon payment of the applicable fees for the applicable term (perpetual or subscription/time-limited), Rogue Wave grants to Licensee a nonexclusive, nontransferable, limited right, and license, to permit Licensed Users to use the Licensed Software, solely for Licensee’s internal business purposes. Such use is limited to the physical computing device or virtual computing environment, number of processes (represented by tokens), and platforms, either owned by Licensee or contractors under its control, for which Licensee has paid the applicable fees. In connection with this license, Licensee may make or have made one copy of the Licensed Software for back-up or disaster recovery purposes, provided, that Rogue Wave’s copyright notice and other proprietary rights notices are reproduced on the copy.

## **3. LICENSE RESTRICTIONS AND LICENSEE RESPONSIBILITIES.**

**3.1 User Restrictions.** Individual User license rights may only be exercised by individuals employed by or under contract to Licensee and for whom Licensee has paid the applicable per product Individual User license fees. If an Individual User ceases to be employed by or under contract to Licensee or permanently ceases work on projects involving the Licensed Software, then Licensee may designate an alternate individual to replace such Individual User at no additional cost. However, the Individual User license is not a concurrent license that may be used by more than one individual in shifts. Concurrent User license rights may only be exercised by individuals employed by or under contract to Licensee and for whom Licensee has paid the applicable per product Concurrent User license fees. Licensee must ensure that no more than the maximum number of licensed Concurrent Users are using the Licensed Software at any one time. If Licensee uses, copies, or modifies the Licensed Software or transfers possession of any copy, adaptation, transcription, or merged portion thereof to any other party in any way not expressly authorized by Rogue Wave, all licenses under this License Agreement are automatically terminated. Academic license rights may only be exercised by an instructor or student at an accredited institution that is organized and operated exclusively for the purpose of teaching its enrolled students (e.g., a university, college, or high school), and for which such institution has been granted a discount to authorize such instructor or student to use the Licensed Software solely for student instruction and learning. Academic license rights may not be used for commercial purposes, including, without limitation, for publication of research findings, to comply with requirements of outside funding, or as a means to advertise the educational institution. Academic discounts are not available for satellite organizations such as research laboratories and hospitals.

**3.2 Unit Restrictions.** Notwithstanding any license management mechanisms used by the Licensed Software, Licensee is responsible for ensuring that the Licensed Software is not used on physical computing devices, virtual computing environments, number of processes (represented by tokens), and platforms in excess of those for which Licensee has paid the applicable fees.

**3.3 Distribution Restrictions.** Licensee has no right to copy the Licensed Software for sublicensing, resale, or distribution to any party other than Licensed Users, including, without limitation, distributing or making the Licensed Software available as part of a value-added reseller, original equipment manufacturer (“OEM”), distributor, or reseller arrangement.

**3.4 General Use Limitations.** All rights not specifically granted herein are retained by Rogue Wave. Without limitation, Licensee may not adapt, modify, alter, improve, upgrade, extend or reverse engineer the Licensed Software or any files generated by the Licensed Software, nor create derivative works of the Licensed Software for any purpose, including error correction or any other type of maintenance. Licensee may not use the Licensed Software on platforms other than those for which it is licensed. Licensee may not, nor may Licensee permit any other person or entity to, reverse assemble, reverse compile, or otherwise translate any binary forms of the Licensed Software or files generated by the Licensed Software, except to the extent applicable laws specifically prohibit such restriction. Licensee’s rights may not be transferred, leased, assigned, or sublicensed except for a transfer of the License Agreement in its entirety to (1) a successor in interest of Licensee’s entire business who assumes the obligations of this License Agreement, or (2) any other party who is reasonably acceptable to Rogue Wave, enters into a substitute version of this License Agreement, and pays an administrative fee intended to cover attendant costs. No service bureau work, multiple-user license, or time-sharing arrangement is permitted, except as expressly authorized by Rogue Wave. If Licensee uses, copies, or modifies the Licensed Software or transfers possession of any copy, adaptation, transcription, or merged portion thereof to any other party in any way not expressly authorized by Rogue Wave, all licenses under this License Agreement are automatically terminated.

**3.5 Proprietary Protection.** Rogue Wave shall have sole and exclusive ownership of all right, title, and interest in and to the Licensed Software and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted to Licensee herein by Rogue Wave. This License Agreement does not provide Licensee with title or ownership of the Licensed Software, but only a right of limited use. Licensee must keep the Licensed Software free and clear of all claims, liens, and encumbrances.

**3.6 Compliance Verification.** Licensee must have a commercially-reasonable process in place to track the usage of the Licensed Software in order to ensure that the appropriate license fees have been paid under this License Agreement. Licensee will, upon Rogue Wave’s request, certify in writing its usage of Licensed Software. In

the event Licensee fails to provide such certification within thirty (30) days of Rogue Wave's request, or, if Rogue Wave reasonably believes that a certification provided by Licensee is inaccurate, Licensee will permit Rogue Wave, or a mutually-approved independent representative, to enter Licensee's premises, during regular business hours, to verify Licensee's compliance with the terms of this License Agreement.

**3.7 Confidentiality.** Licensee agrees to maintain in confidence the source code version of the Licensed Software by using at least the same physical and other security measures as Licensee uses for its own confidential technical information and documentation, but in no case less than reasonable measures. Licensee further agrees not to disclose the source code version of the Licensed Software, or any aspect thereof (including, without limitation, header files), to anyone other than employees or contractors who have a need to know or obtain access to such information in order to support Licensee's authorized use of the Licensed Software and are bound to protect such information against any other use or disclosure. Licensee agrees that all material and information relating to the Licensed Software is made available for use solely under and in accordance with the terms and conditions of this License Agreement. Licensee has no right at any time during or after cancellation or termination of this License Agreement to disclose such material and/or information relating to the Licensed Software, whether directly or indirectly, to any third party without Rogue Wave's prior written approval. Licensee shall hold harmless, defend, and indemnify Rogue Wave from and against any and all losses, costs, damages, and expenses arising out of or in connection with Licensee's failure to comply with requirements of this Section 3.7.

**3.8 Remedies.** Licensee acknowledges that, in the event of Licensee's breach of any of the foregoing provisions, Rogue Wave will not have an adequate remedy in money or damages. Rogue Wave will therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request without posting a bond. Rogue Wave's right to obtain injunctive relief shall not limit its right to seek further remedies.

**4. MAINTENANCE AND SUPPORT OF LICENSED SOFTWARE.** Rogue Wave, or its authorized resellers, shall provide maintenance and support on the Licensed Software at the level and for the period for which Licensee has paid the applicable fees as specified in the applicable Order. Maintenance and Support services provided by Rogue Wave are provided in accordance with Rogue Wave's standard maintenance and support and obsolescence policies, which are subject to change. Maintenance and Support is limited to platforms listed on Rogue Wave's current product support matrix, which is also subject to change. Licensee is responsible for ensuring that its environment is on the current product support matrix. Off-matrix support is available from Rogue Wave for an additional fee.

**5. FEES AND PAYMENT.** License fees and Maintenance and Support fees will be as set forth on the applicable Order. All license fees and Maintenance and Support fees that are invoiced to Licensee will be payable by Licensee in United States Dollars, unless otherwise set forth on the Order. All invoices shall be due and payable within thirty (30) days after the invoice date. If Licensee fails to pay any amounts due under this License Agreement by the due date, Rogue Wave will have the right to charge interest at a rate equal to the lesser of 1.5% per month, or the maximum rate permitted by applicable law, until Licensee pays all amounts due. Licensee is required to pay any sales, use GST, value-added withholding, or similar taxes or levies, whether domestic or foreign, other than taxes based on the income of Rogue Wave. Rogue Wave may adjust the fees charged to Licensee hereunder on notice (electronic notice is sufficient) delivered to Licensee at least forty-five (45) days prior to the end of the then-current subscription term, or Maintenance and Support term (and such fees will take effect beginning on the start of the next term). Notwithstanding the foregoing, Rogue Wave may increase the fees for any term over the fees from the preceding term by the greater of 5% and CPI. Except as expressly set forth in Section 6.1, all fees are non-refundable.

#### **6. LIMITED WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY.**

**6.1 Limited Warranty.** Rogue Wave warrants to Licensee and for Licensee's benefit only that the unaltered Licensed Software, when used as permitted under the License Agreement and in accordance with the instructions in the Documentation, will operate substantially as described in the Documentation for a period of thirty (30) days from the date of delivery (the "Software Warranty Period"). Rogue Wave does not warrant that use of the Licensed Software will be uninterrupted or error-free, that all errors will be corrected, or that use of the Licensed Software will meet Licensee's needs. Rogue Wave will, at its own expense and as its sole obligation and Licensee's sole and exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible error in the Licensed Software reported to Rogue Wave by Licensee in writing during the Software Warranty Period; provided, however, that no such error correction provided to Licensee will extend the original Software Warranty Period. If Rogue Wave determines that it is unable to correct the error, Rogue Wave may, upon approval by Licensee, refund to Licensee the fees paid by the Licensee for the defective Licensed Software and terminate the License Agreement and all licenses granted herein. In the event Licensee does not approve of such refund and termination of the License Agreement, Licensee will be entitled to keep the Licensed Software and use it pursuant to the licenses granted herein; provided, however, that Rogue Wave will not be obligated to provide Maintenance and Support for the Licensed Software that is impacted by the reported defect.

**6.2 Exclusions.** The limited warranty set forth above will not apply to defects resulting from, or because of, modifications made to the Licensed Software by anyone other than Rogue Wave, misuse, failure of media not furnished by Rogue Wave, operation with media, software or equipment not authorized by Rogue Wave in the Documentation or not meeting or not maintained in accordance with the supplier's specifications, or causes other than ordinary use. The warranty set forth above will not be enlarged, diminished or affected by, and no obligation or liability will arise from, Rogue Wave's rendering of technical advice, assistance or service in connection with Licensee's selection or use of the Licensed Software. Certain open source or other-vendor software may be distributed with the Licensed Software or recommended in connection with its installation and use. Such products are provided or recommended for Licensee's convenience only. Rogue Wave makes no representation or warranty of any kind regarding such products. Rogue Wave offers no support for such products and shall have no liability associated with their use. Licensee's use of these products shall be in accordance with the licenses for such products, copies of which are included with the products and/or in the Rogue Wave documentation.

**6.3 DISCLAIMER.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 5.1 ABOVE, THE LICENSED SOFTWARE IS PROVIDED "AS IS," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. ROGUE WAVE SPECIFICALLY DISCLAIMS ALL OTHER PROMISES, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE OR COURSE OF DEALING.

**6.4 LIMITATION OF LIABILITY.** THE CUMULATIVE LIABILITY OF ROGUE WAVE TO LICENSEE FOR ALL CLAIMS RELATING TO THE LICENSED SOFTWARE AND THIS LICENSE AGREEMENT, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL LICENSE FEES PAID TO ROGUE WAVE HEREUNDER. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS LICENSE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. ROGUE WAVE SHALL HAVE NO LIABILITY FOR LOSS OF DATA OR DOCUMENTATION, IT BEING UNDERSTOOD THAT LICENSEE IS RESPONSIBLE FOR REASONABLE BACK-UP PRECAUTIONS. IN NO EVENT SHALL ROGUE WAVE BE LIABLE FOR ANY LOSS OF PROFITS; ANY INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES; OR ANY CLAIMS OR DEMANDS BROUGHT AGAINST LICENSEE, EVEN IF ROGUE WAVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS LICENSE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. LICENSEE MAY HAVE ADDITIONAL RIGHTS UNDER CERTAIN LAWS (E.G., CONSUMER LAWS) THAT DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF SUCH LAWS APPLY, CERTAIN EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO LICENSEE; HOWEVER, ALL OTHER RESTRICTIONS AND LIMITATIONS SHALL REMAIN IN EFFECT.

**7. INDEMNIFICATION.** Rogue Wave agrees to defend Licensee from and against any third-party claims alleging that the Licensed Software furnished and used within the scope of this License Agreement infringes or misappropriates a U.S. patent issued as of the date of grant of a license to the Licensed Software, copyright, trademark or trade secret and will pay all final judgments awarded or settlements entered into on such claims. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) a modification of the Licensed Software by anyone other than Rogue Wave or its duly authorized agent; (ii) the

incorporation into the Licensed Software of any information provided by or requested by Licensee; (iii) a combination of the Licensed Software with any third party software or equipment not specified in the Documentation and where such combination is the cause of such infringement; or (iv) the use of a version of the Licensed Software other than the then-current version if the infringement would have been avoided by using of the then-current version. In the event the Licensed Software is held or is believed by Rogue Wave to infringe, Rogue Wave may, at its sole option and expense, elect to (a) modify the Licensed Software so that it is non-infringing; (b) replace the Licensed Software with non-infringing Licensed Software which is functionally equivalent; (c) obtain a license for Licensee to continue to use the Licensed Software as provided hereunder; or if none of (a), (b), or (c) is commercially reasonable, then (d) terminate the license for the infringing Licensed Software and, (x) in the case of perpetual licenses, refund the perpetual license fees paid for that Licensed Software, prorated over a five (5) year term from the date first licensed, and refund any pre-paid Maintenance and Support fees for the remaining portion of the Maintenance and Support term for the affected licenses, or (y) in the case of subscription licenses, refund any pre-paid subscription license fees for the remaining portion of the subscription term for the affected licenses. THIS SECTION 7 STATES ROGUE WAVE'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS OF ANY KIND. Rogue Wave's indemnification obligations under this Section 7 are conditioned upon the Licensee (a) giving prompt notice of the claim to Rogue Wave; (b) granting sole control of the defense or settlement of the claim or action to Rogue Wave; and (c) providing reasonable cooperation to Rogue Wave and, at Rogue Wave's request and expense, assistance in the defense or settlement of the claim.

## 8. TERM/TERMINATION.

**8.1 Term.** The term of this License Agreement will begin as of the date that Licensee receives the Licensed Software and will terminate as set forth in this Section 8. If Licensee is licensing the Licensed Software on a subscription basis, then each Order will have the initial subscription term set forth thereon. Upon termination of the initial subscription term, each Order will automatically renew for successive renewal subscription terms of equal length to its initial subscription term, unless the parties agree in writing to modify the successive subscription term prior to the expiration of the then-current subscription term, or one party provides the other party with written notice of non-renewal at least forty-five (45) days prior to the expiration of the then-current subscription term. If no initial subscription term is set forth in an Order, the initial subscription term for such Order will be one (1) year.

**8.2 Termination for Cause.** Either party may terminate this License Agreement if the other party (a) fails to cure any material breach of this License Agreement within thirty (30) days after written notice ten (10) days in the case of non-payment or in the event Licensee breaches any license or use restrictions (provided that, in the event of Licensee's notice of breach by Rogue Wave, such notice must (i) be sufficiently detailed for Rogue Wave to verify and remedy the issue and (ii) expressly state the intent to terminate); (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within ninety (90) days thereafter). With respect to Licensee's breach of its payment obligations, or any license or use restrictions, electronic notice to Licensee is sufficient hereunder. Termination of this License Agreement will automatically terminate all Orders.

**8.3 Effect of Termination.** Upon termination of the License Agreement for any reason the following terms shall apply: (a) all rights granted under this License Agreement will immediately terminate and Licensee must immediately stop all use of the Licensed Software (and if Licensee has time-limited/subscription licenses, Rogue Wave will disable them to prevent their use); (b) Licensee must return to Rogue Wave or destroy all copies of the Licensed Software provided to or made by or on behalf of Licensee, and will, within ten (10) days after the effective date of termination, provide Rogue Wave with written certification that all such copies have been returned or destroyed; and (c) all provisions of this License Agreement with the exception of the licenses granted in Section 2, the Maintenance and Support obligations set forth in Section 4 and the indemnification obligations in Section 7 will survive termination of this License Agreement for any reason. Termination of the License Agreement will not affect Licensee's obligation to pay all amounts accrued hereunder prior to the effective date of termination or for continued use after termination of the License Agreement. Licensee agrees that the termination of this License Agreement by Rogue Wave can never entail liability for Rogue Wave to pay damages to Licensee for anticipated or missing profits that could otherwise have arisen through Licensee's use of the License.

## 9. MISCELLANEOUS.

**9.1 Severability.** If any term or provision of the License Agreement is found to be invalid under any applicable statute or rule of law, then, that provision notwithstanding, the License Agreement will remain in full force and effect, and in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

**9.2 Force Majeure.** Neither party will be deemed to be in breach of this License Agreement, nor otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this License 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 License Agreement upon providing seven (7) days' advance written notice.

**9.3 Governing Law/Forum Selection.** This License 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 License 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 License Agreement.

**9.4 No Joint Venture.** Nothing contained in the License Agreement will be construed so as to make the parties partners or joint venturers or to permit either party to bind the other party to any agreement or purport to act on behalf of the other party in any respect.

**9.5 Waiver and Modifications.** Failure by Rogue Wave to enforce any rights under this License Agreement will not be construed as a waiver of such rights, and a waiver in one or more instances will not be construed as constituting a continuing waiver or as a waiver in other instances. No modification of this License Agreement shall be binding unless it is in writing and is signed by an authorized representative of the party against whom enforcement of the modification is sought.

**9.6 Import/Export Law.** Licensee may not import, use or otherwise export or re-export the Licensed Software except as authorized by United States law and the laws of the jurisdiction in which the Licensed Software was obtained.

**9.7 Taxes.** License fees and Maintenance and Support fees are exclusive of, and Licensee will pay all shipping charges and all taxes, duties and other charges or fees imposed by governmental authorities arising out of the License Agreement or the use of the Licensed Software by Licensee. In addition, if any Licensed Software will be delivered to points outside of the United States, all export duties, import duties, tariffs, value added taxes, licenses and other similar taxes, duties and fees will be paid by Licensee. If Licensee is required by the laws of any jurisdiction to deduct or withhold from any payment to Rogue Wave any income taxes which may be levied against Rogue Wave, then Licensee's payment shall be increased to an amount equal to the pre-tax payment due divided by a factor equal to one minus the applicable foreign tax rate. The tax shall then be applied to and deducted from the increased payment.

**9.8 U.S. Government Rights.** The Licensed Software is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Licensed Software with only those rights set forth in this License Agreement. The software licensed to civilian agencies is licensed with Restricted Rights pursuant to FAR 52.227-19.

**9.9 Assignment.** This License Agreement, or any of your rights and obligations under this License Agreement, cannot be assigned or otherwise transferred in whole or in part, and any such attempted assignment or transfer by Licensee in violation of the foregoing will be null and void.

**9.10 Entire Agreement.** This License Agreement, including all invoices hereunder, 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. There are no promises, covenants or undertakings other than those expressly set forth in this License Agreement. If Licensee issues a Licensee purchase order, or any other Licensee-generated documentation, and the terms and conditions conflict with this License Agreement, the terms and conditions contained in this License Agreement, including all invoices incorporated hereunder, will control. 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 License Agreement, and all such terms or conditions will be null and void and of no force and effect.

**9.11 English Language.** The parties hereto have expressly required that the present License Agreement be drawn up in the English language. / Les parties aux présentes, ont expressément exigé que la présente Convention soient rédigées en langue anglaise.

**10. EVALUATION LICENSE.** The terms of this Section 10 shall solely apply to Licensed Software licensed for purposes of Evaluation (the “Evaluation Software”). The terms of Sections 2, 6.1, 6.2, 6.3 and 8 shall not apply to the parties’ rights and obligations with respect to Evaluation Software.

#### **10.1 Rights and Restrictions.**

(a) Rogue Wave grants Licensee a non-exclusive, non-transferable license to (i) install the Evaluation Software on Licensee’s internal server in the country to which such Evaluation Software is delivered, and (ii) use the Evaluation Software for the sole purpose of internally evaluating the Evaluation Software, for a period agreed to in writing between Licensee and Rogue Wave, or the period specified in the applicable license key delivered to Licensee for the Evaluation Software and any extensions thereto (the “Trial Period”). Licensee may not make use of the Evaluation Software and the Output for any commercial or production purposes. Licensee shall not make the Evaluation Software, and the Output available to any third parties.

(b) Rogue Wave may provide Licensee with limited installation support for the Evaluation Software during the Trial Period.

(c) Upon the expiration of the Trial Period, the license granted in Section 10.1(a) above shall terminate, and Licensee shall uninstall and cease use of the Evaluation Software. Rogue Wave may also include a "time bomb" within the Evaluation Software that shall prevent use of the Evaluation Software after the Trial Period has expired. Notwithstanding the Trial Period, this License Agreement shall terminate immediately upon notice from Rogue Wave if Licensee fails to comply with any provision of this License Agreement.

**10.2 Exclusion of Warranties. ALL EVALUATION SOFTWARE AND MAINTENANCE SUPPORT SERVICES THAT ARE PROVIDED BY ROGUE WAVE OR ANY OF ITS AFFILIATES ARE PROVIDED “AS IS.” NO WARRANTIES OR COMMITMENTS, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE EVALUATION SOFTWARE OR MAINTENANCE AND SUPPORT SERVICES SUPPLIED BY ROGUE WAVE HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEMS INTEGRATION, TITLE, SATISFACTORY QUALITY AND NON-INFRINGEMENT. THE SOLE REMEDY OF LICENSEE FOR ANY ASSERTED DEFECT, ERROR, OR OTHER SHORTCOMING IN THE EVALUATION SOFTWARE IS THAT LICENSEE MAY REQUEST MAINTENANCE AND SUPPORT SERVICES FOR EVALUATION SOFTWARE.**