



by Perforce

# SOFTWARE LICENSE AGREEMENT

IMSL(r) C NUMERICAL LIBRARY (June 1, 2023)

**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. **"Application"** means a software application created by a Licensed Developer to support the internal operation of Licensee's business that makes use of or incorporates the Licensed Software in its implementation without exposing any part of the Licensed Software application programming interface either directly or indirectly.
2. **"Licensed Developer"** means a natural person employed by or under contract with Licensee for whom Licensee has paid the applicable development license fees required to authorize such person to use the Licensed Software to develop Applications on Licensee's behalf. Licenses for Licensed Developers are priced on a per natural person, and per product bundle, or per module, of the Licensed Software basis. For purposes of clarity, a Licensed User is not a Licensed Developer, and separate licenses must be purchased for a Licensed Developer to also be a Licensed User and vice versa.
3. **"Licensed Device"** means a specific physical computing device consisting of a specific number of physical CPUs and cores, owned by Licensee, for which Licensee has paid the applicable deployment and use license fees (including any applicable premiums for cross-platform deployment) required to authorize Licensee to deploy and use Applications on such device that is set forth in a distribution addendum to this License Agreement, any addendum or amendment to this License Agreement, or an Order. Deployment and use licenses for Licensed Devices are priced on a platform specific, per product bundle or per module, per physical CPU, and per core basis.
4. **"Licensed Instance"** means a specific public or private virtual computing environment owned by Licensee for which Licensee has paid the applicable deployment and use license fees required to authorize Licensee to deploy Applications on the specific virtual computing environment that is set forth in a distribution addendum to this License Agreement, any addendum or amendment to this License Agreement, or an Order. Deployment and use licenses for Licensed Instances are priced based on the type of platform, per product bundle or per module, and per virtual computing environment basis.
5. **"Licensed Software"** means Rogue Wave's proprietary IMSL(r) C Numerical Library, in object code format only, together with the user guides, reference manuals, build guides, program listings, flow charts, logic diagrams, functional specifications, instructions 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.
6. **"Licensed User"** shall mean a natural person employed by or under contract to Licensee, a non-human operated device, or an automated process that is assigned a unique and fixed user account to consume one license to use and/or access the Licensed Software, Output, or an Application, under this License Agreement, regardless of whether such natural person or automated process is actively using the Licensed Software, Output, or an Application at any given time. For purposes of clarity, a Licensed User is not a Licensed Developer, and separate licenses must be purchased for a Licensed Developer to also be a Licensed User and vice versa.
7. **"Maintenance and Support"** means the technical support and software maintenance services on the Licensed Software for which Licensee has paid the applicable Maintenance and Support fees, either separately for a perpetual license of the Licensed Software, or as included in the subscription license fee for the Licensed Software, as applicable.
8. **"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).

9. **"Output"** shall mean the data in electronic or other format containing the results generated by using the Licensed Software.

## 2. LICENSE GRANTS.

1. **Development 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) as is set forth in a distribution addendum to this License Agreement, any addendum or amendment to this License Agreement, or an Order, Rogue Wave grants to Licensee a nonexclusive, nontransferable, limited right and license to: (a) permit Licensed Developers to install and use the Licensed Software, on a per product, or per module, of the Licensed Software basis, in object code format only, for the sole purpose of creating and testing Applications; and (b) copy or have copied the Licensed Software as necessary for the purpose of exercising the rights granted under this Section 2.1 or for back-up or disaster recovery purposes, provided that Rogue Wave's copyright notice and other proprietary rights notices are reproduced on each copy.
2. **Deployment and Use 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) as is set forth in a distribution addendum to this License Agreement, any addendum or amendment to this License Agreement, or an Order, Rogue Wave grants to Licensee a nonexclusive, nontransferable, limited right and license to: (a) permit Licensed Developers to install Applications on Licensed Devices and/or Licensed Instances, as applicable, located at facilities owned by Licensee or contractors under Licensee's control, and/or Licensed Instances, whether or not located at facilities owned or leased by Licensee or contractors under Licensee's control, and to Licensed Users to use such Applications.
3. **Site License Grant.** Rogue Wave may, from time to time, indicate that a site license is available for the Licensed Software for the internal development and deployment licenses granted in Sections 2.1 and 2.2 above. Subject to the terms and conditions of this License Agreement, including Section 3.4, and upon payment of the applicable site subscription fees, Rogue Wave shall grant to Licensee a nonexclusive, nontransferable, limited right and license to permit Licensed Users at the site for whom Licensee has paid the applicable site license fees to install and use, or otherwise access, the Licensed Software solely for Licensee's direct internal business purposes. For purposes of determining the applicable site license fee, a non-human operated device will be counted as a Licensed User at a site if such device could access such Licensed Software, Output, or an Application.
4. **Per Seat License Grant.** Rogue Wave may, from time to time, indicate that a per seat license is available for Licensed Users for the internal development and use of the Licensed Software. Subject to the terms and conditions of this License Agreement, including Section 3.4, and upon payment of the applicable per seat subscription fees, Rogue Wave shall grant to Licensee a nonexclusive, nontransferable, limited right and license to permit Licensed Users for which Licensee has paid the applicable per seat subscription license fees, to install, develop, and use the Licensed Software, in object code format, solely for Licensee's direct internal business purposes.

## 3. LICENSE RESTRICTIONS AND LICENSEE RESPONSIBILITIES.

1. **Development Restrictions.** The development rights granted to Licensee in Section 2.1 may only be exercised by individual persons employed by or under contract to Licensee that Licensee has designated as "Licensed Developers" and for whom Licensee has paid the applicable development license fees. If one supported Licensed Developer 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 person to replace such Licensed Developer at no additional cost. However, individual development licenses may not be used by different individuals in shifts. Licensee may not create a programmatic interface that makes use of the Licensed Software application programming interfaces for use by any party other than Licensed Developers and must ensure that persons other than Licensed Developers do not have programmatic access to the Licensed Software either directly or indirectly. Licensee may not allow anyone other than a Licensed Developer, including Licensed Users who are not Licensed Developers, to use the Licensed Software or Documentation for the development of Applications or allow Licensed Developers to use the Licensed Software or Documentation for any purpose except for the development of Applications.
2. **Deployment and Use Restrictions.** The deployment and use rights granted to Licensee in Section 2.2 may only be exercised on Licensed Devices and Licensed Instances owned or leased by Licensee, or provided to contractors under Licensee's control, located at facilities owned or leased by Licensee that Licensee has designated as a Licensed Device or Licensed Instance, as applicable, in a distribution addendum to this License Agreement, any addendum or amendment to this License Agreement, or in an Order, and for which Licensee has paid the applicable deployment and use license fees for such specified Application. The deployment and use license for a Licensed Device is a one-time use license for a specific physical computing device. It is not a concurrent license that may be used on numerous physical computing devices in shifts. The deployment and use license for a Licensed Instance is for a specific virtual computing environment for which the deployment mechanism has been identified in the addendum or amendment to this License Agreement, or in an Order. Licensee may use Applications deployed on a Licensed Instance on any of the virtual CPU cores contained within the Licensed Instance provided that its use at any one time does not exceed the total number of virtual CPU cores licensed for the Licensed Instance that has been specified in an addendum or amendment to this License Agreement, or in an Order. Licensee may not install Applications on additional or alternate physical computing devices or virtual computing environments or on back-up or fail-over physical computing devices or virtual computing environments without paying the applicable fees for such physical computing devices or virtual computing environments. While deployment and use license fees do not apply to those physical computing devices and virtual computing environments that merely access Applications that are deployed and run on Licensed Devices and Licensed Instances, Licensee may not install or run

Applications on any other physical computing devices and virtual computing environments without paying the applicable deployment and use license fees for such physical computing devices and virtual computing environments. Notwithstanding any license management mechanisms used by the Licensed Software, Licensee is responsible for ensuring that the Licensed Software is not used in excess of those licenses for which Licensee has paid the applicable fees.

3. **Distribution Restrictions.** Except as may be otherwise specified in a written addendum to this License Agreement executed by Rogue Wave, Licensee has no right to copy for distribution, distribute or permit deployment, access, or use of the Licensed Software or Applications on computers or at facilities not owned or leased by Licensee or contractors under Licensee's control.
4. **Restrictions on use of the Output and Applications.** In addition to the restrictions contained in this Section 3, the Licensee shall not provide the Output or Applications to parties who are not Licensed Users. Only Licensed Users for whom Licensee has paid the applicable license fees may make use of the Licensed Software, Output or Applications. Licensee shall not commercialize in any way the Output or Application including, without limitation, by licensing, sub-licensing, assigning, or sub-contracting the use of the Output or Application.
5. **General Use Limitations.** All rights not specifically granted herein are retained by Rogue Wave. Licensee may not, nor may Licensee permit any other person or entity to use, copy, modify, or distribute the Licensed Software (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof, or the Documentation except as expressly authorized by Rogue Wave. In connection with this license for the Licensed Software, 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. Licensee may not modify or port the Licensed Software to operate on or deploy the Licensed Software or Applications on platforms, or otherwise use the Licensed Software, other than those for which it has paid the appropriate fees. 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, except to the extent applicable laws specifically prohibit such restriction. No service bureau work, multiple-user license, or time-sharing arrangement is permitted, except as expressly authorized in writing by Rogue Wave. Licensee may not charge for the use of Applications on a SaaS basis. 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 in writing by Rogue Wave, all licenses under this License Agreement are automatically terminated. Academic license rights may only be exercised by a teacher 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 teacher 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.
6. **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.
7. **Compliance Verification.** Licensee must have a commercially-reasonable process in place to track (i) the number of Licensed Developers using the Licensed Software, (ii) with regard to the licensing of Licensed Devices, the number of physical computing devices on which the Applications are deployed, as well as the platforms used by and the number of CPUs and cores contained on such physical computing devices, (iii) with regard to licensing of Licensed Users, the number of Licensed Users in order to ensure that the appropriate license fees have been paid, and, (iv) with regard to the licensing of Licensed Instances, the scope of usage of Applications on such virtual computing instances in order to ensure that the appropriate license fees have been paid. Licensee will, upon Rogue Wave's request, certify in writing the number of Licensed Developers and Licensed Users using the Licensed Software and/or the number and deployment details of physical computing devices and/or virtual computing instances on which the Licensed Software is deployed, on a per product bundle, or per project, of the Licensed Software basis. In the event Licensee fails to provide such certification within thirty (30) days of Rogue Wave's written request, or, if Rogue Wave reasonably believes that a certification provided by Licensee is inaccurate, then upon providing Licensee with advance written notice, Rogue Wave, or a mutually approved independent representative, will be permitted to verify Licensee's compliance with the terms of this License 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. Rogue Wave 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 list price.
8. **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 3.8.

9. **Relationship with End Users.** There are no third-party beneficiaries to this License Agreement. Consequently, Rogue Wave provides no warranty at all to any person, other than the limited warranty provided to Licensee hereunder. Licensee will be solely responsible for the development of the Applications authorized by this License Agreement and for providing all support or services required or requested by end users of the Applications. Licensee will not make any representations or warranties to its employees, customers, end users or any other third-party on Rogue Wave's behalf. Rogue Wave assumes no responsibility under this License Agreement, either directly or indirectly, for damages to Licensee or third parties resulting from the direct or indirect use of the Applications created by or on behalf of Licensee.
10. **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. All invoices shall be due and payable within thirty (30) days after the invoice date, unless otherwise set forth on the Order. If Licensee fails to pay any amounts due under this 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), or by invoice, 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, and except as expressly set forth in Section 6.1, all fees are non-refundable.
6. **LIMITED WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY.**
  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 "Licensed 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 Licensed Software Warranty Period; *provided, however*, that no such error correction provided to Licensee will extend the original Licensed Software Warranty Period. If Rogue Wave determines that it is unable to correct the error, Rogue Wave may, in the case of a perpetual license for the Licensed Software, upon approval by Licensee, refund to Licensee the fees paid by the Licensee for the defective Licensed Software and terminate the License Agreement with respect to the affected perpetual licenses granted herein. In the event Licensee does not approve of such refund and termination of the License Agreement with respect to the affected perpetual licenses of the Licensed Software, 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 perpetual licenses of the Licensed Software that are impacted by the reported defect. In the event the Licensee has a subscription-based license for the Licensed Software, and if Rogue Wave determines that it is unable to correct the error, Rogue Wave will terminate the subscription licenses for the affected Licensed Software, and refund to the Licensee the remaining portion of the pre-paid subscription license fees for the affected licenses.
  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 Documentation.

3. **DISCLAIMER.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 6.1 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.
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 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 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. **TERMINATION.**
  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.
  2. **Termination for Cause.** Either party may terminate this Agreement if the other party (a) fails to cure any material breach of this 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 Agreement will automatically terminate all Orders.

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/subsorption 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 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.

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.
2. **Force Majeure.** 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.
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.
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.
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.
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.
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.
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. **Assignment.** Licensee's rights may not be transferred, leased, assigned, or sublicensed except for a transfer of the License Agreement in its entirety to (a) a successor in interest of Licensee's entire

business who assumes the obligations of this License Agreement, or (b) 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.

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.
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.
  1. **Rights and Restrictions.**
    1. 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.
    2. Rogue Wave may provide Licensee with limited installation support for the Evaluation Software during the Trial Period.
    3. Upon the expiration of the Trial Period, the license granted in Section 10.1.1 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.
  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.