

Visualization

by Perforce

SOFTWARE LICENSE AGREEMENT VISUALIZATION PRODUCT LINE (NOVEMBER 2, 2021)

IMPORTANT – READ CAREFULLY: THIS SOFTWARE LICENSE AGREEMENT (THE “LICENSE AGREEMENT”) IS A LEGAL AGREEMENT BY AND BETWEEN YOU AND ROGUE WAVE SOFTWARE, INC., A SUBSIDIARY OF PERFORCE SOFTWARE, INC. (“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 “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.

1.2 “Licensed Developer” means a natural person employed by, or under contract to, Licensee for whom Licensee has designated as a “Licensed Developer,” and for whom Licensee has paid the applicable development license fees required to authorize such natural person to use the Licensed Software to develop Applications on Licensee’s behalf. Licenses for Licensed Developers are priced on a per natural person (“**Individual User**”), concurrent (“**Concurrent User**”), or academic (“**Academic User**”), and per product, or per module, basis.

1.3 “Licensed Device” means a single user, physical computing device owned or leased by Licensee, or by contractors under Licensee’s control, for which Licensee has paid the applicable device license fees required to authorize Licensed Users to deploy, use, or access Applications on such device(s) that are set forth in an Order. Licenses for Licensed Devices are priced on a platform specific, per product, per device basis for use by Licensed Users on an Individual User, Concurrent User, or Academic User basis. Use or access of Applications deployed on servers is limited to Licensed Devices and Licensed Users.

1.4 “Licensed Instance” means a specific public or private virtual computing environment owned by Licensee, or by contractors under Licensee’s control, for which Licensee has paid the applicable licensed instance fees required to authorize Licensed Users to deploy, use, or access Applications on the specific virtual computing environment(s) that are set forth in an Order. Use or access to the Applications deployed on Licensed Instances are priced on a platform specific, per product, per virtual computing environment basis for use by Licensed Users on an Individual User, Concurrent User, or Academic User basis.

1.5 “Licensed Software” means the Rogue Wave software product(s), in object code format only, 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.

1.6 “Licensed User” means an Individual User, a Concurrent User, and/or an Academic User for whom Licensee has paid the applicable fees required to authorize such natural person to use a Licensed Device on Licensee’s behalf.

1.7 “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 perpetual licenses of the Licensed Software, or as included in the subscription license fee for the Licensed Software, as applicable.

1.8 “Order” means, collectively, a duly authorized quote 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 quote (with no additional or different terms, unless such additional or different terms are expressly accepted by Rogue Wave in writing).

2. LICENSE GRANTS.

2.1 Development License Grant. Subject to the terms and conditions of this License Agreement, including Licensee’s agreement to pay the applicable fees, for the applicable term (perpetual or subscription/time-limited) as is set forth in an Order, Rogue Wave grants to Licensee a nonexclusive, nontransferable, limited right and license to permit Licensed Developers to install and use the Licensed Software in object code form for the sole purpose of creating and testing Applications. In connection with this license, Licensee may make 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.

2.2 Use License Grant. Subject to the terms and conditions of this License Agreement, including Licensee’s agreement to pay the applicable fees, for the applicable term (perpetual or subscription/time-limited) as is set forth in an Order, Rogue Wave grants to Licensee a nonexclusive, nontransferable, limited right and license to permit Licensed Users to use the Licensed Software, as embedded in Applications developed by Licensed Developers, on Licensed Devices or in Licensed Instances located at facilities owned by Licensee, or by contractors under Licensee’s control, solely for Licensee’s internal business purposes. In connection with this license, Licensee may copy the Licensed Software embedded in, or accessed in, the execution of an Application as necessary for the purpose of exercising the rights granted under this Section 2.2, provided that Licensee may not remove any copyright notice or other proprietary rights notices contained in the Licensed Software.

3. LICENSE RESTRICTIONS AND LICENSEE RESPONSIBILITIES.

3.1 Development Restrictions. The development rights granted to Licensee in Section 2.1 may only be exercised by Licensed Developers. With regard to individual or node-locked developer licenses, if one 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 Licensed Developer to replace such departed Licensed Developer at no additional cost. However, individual or node-locked development licenses may not be used by numerous developers in shifts. Conversely, concurrent or floating development licenses may be used by any number of individuals so long as the maximum number of individuals using the Licensed Software at any time does not exceed the number of concurrent or floating development licenses purchased. 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 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.

3.2 Use Restrictions. The use rights granted to Licensee in Section 2.2 may only be exercised by Licensed Users and on the Licensed Devices and Licensed Instances owned or leased by Licensee, or by contractors under Licensee's control, and located at facilities owned or leased by Licensee, or by contractors under Licensee's control, and for which Licensee has paid the applicable license fees. Licensee must license every a single user, physical computing device and public or private virtual computing environment that runs, provides data to, uses services provided by, or otherwise accesses Applications containing the Licensed Software. Licensee may not install Applications on back-up or fail-over devices or instances without paying the applicable fees for such devices or instances. Notwithstanding any license management mechanisms used by the Licensed Software, Licensee is responsible for ensuring that the Licensed Software is not used by parties other than Licensed Users, or on devices and instances in excess of those for which Licensee has paid the applicable fees. Individual User license rights may only be exercised by individuals employed by or under contract to Licensee 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 User to replace such departed 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. Academic User license rights may only be exercised by a teacher or student at an accredited institution organized and operated exclusively for the purpose of teaching its enrolled students (e.g., a university, college, or high school) that has been granted a discount to authorize such person to use the Licensed Software solely for student instruction and learning. Academic discounts are not available for satellite organizations such as research laboratories and hospitals.

3.3 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 of the Licensed Software or Applications on devices and instances, or at facilities not owned or leased by Licensee, or by contractors under Licensee's control.

3.4 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. Licensee may not modify or port the Licensed Software to operate on or deploy the Licensed Software or Applications on platforms 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. 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 in writing 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 in writing 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.

(a) **Confidentiality General Terms.** Each party to this License Agreement agrees to keep confidential and to use only for purposes of performing its obligations under this License Agreement, any proprietary or confidential information of the other party disclosed pursuant to this License Agreement that is marked as confidential, is identified at the time of disclosure as confidential, or that would reasonably be considered confidential or proprietary in nature. The obligation of confidentiality shall not apply to information that is publicly available through authorized disclosure, or information that is required to be disclosed by law, government order, or request to be disclosed (provided that the receiving party shall give reasonable advance written notice to the other party prior to such disclosure and an opportunity, at the objecting party's expense, to take legal steps to resist or narrow such request). Licensee acknowledges and agrees that the Licensed Software shall be deemed as Rogue Wave's confidential information, as more particularly provided in Section 3.7(b) of this License Agreement. Each party's obligations of nondisclosure with regard to proprietary or confidential information are effective as of the date such proprietary or confidential information is first disclosed to the receiving party and will expire five (5) years thereafter; *provided, however*, that with respect to any proprietary or confidential information that constitutes a trade secret (as determined under applicable laws), such obligations of nondisclosure will survive the termination or expiration of this License Agreement for as long as such proprietary or confidential information remains subject to trade secret protection under applicable laws.

(b) **Confidentiality of Licensed Software.** Licensee agrees to maintain in confidence the object 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 object 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. These obligations shall not apply to any information generally available to the public, ascertainable based on the operation of the binary code version of Applications, independently developed or obtained without reliance on Rogue Wave's information, or as approved for release in writing by Rogue Wave without restriction.

3.9 Development of Applications. The Licensed Software is intended for use by sophisticated developers. Licensee is responsible for selecting persons who are qualified to use the Licensed Software on Licensee's own equipment and are familiar with the Licensed Software. Licensee is also responsible for ensuring a proper environment and proper utilities for the development and execution of Applications utilizing the Licensed Software. Licensee represents that it has the requisite expertise to evaluate the suitability of the Licensed Software and that it has undertaken its own investigation of the suitability of the Licensed Software in the Applications. Licensee represents that it has relied upon its own skill and judgment in selecting the Licensed Software and developing the Applications.

3.10 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.

3.11 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 on 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 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 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.

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 Agreement infringes or misappropriates a U.S. patent issued as of the Effective Date, 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 a 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 a 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 refund the license fees paid for that Licensed Software, prorated over a five (5) year term from the Effective Date. 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: (x) giving prompt notice of the claim to Rogue Wave; (y) granting sole control of the defense or settlement of the claim or action to Rogue Wave; and (z) 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.

8.1 Term. The term of this License Agreement will begin as of the date that Licensee receives the Licensed Software and will remain in effect perpetually unless terminated under 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 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.

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; (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 and Maintenance and Support obligations set forth in Section 4 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.

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 Agreement, nor otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement arising out matters beyond the reasonable control of a party, including, war, strikes, lock outs, or industrial disputes (except in relation to a party's own workforce), outbreak of hostilities, riots, civil disturbances, pandemics, epidemics, or quarantines, acts or orders of any government department or constituted body, fire, explosion, earthquake, flood, acts of God, or acts of terrorism; *provided, however*, that no event will be treated as beyond the reasonable control of a party if it is attributable to a willful act or omission by such party, or any failure by such party to take reasonable precautions or any failure to mitigate or take reasonable steps to overcome such event. If the performance of the impacted party is prevented for a period of thirty (30) days or more, the party not affected may terminate this Agreement upon providing seven (7) days' advance written notice.

9.3 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 either party to enforce any rights under this License Agreement will not be construed as a waiver of such rights, and a waiver by either party of a default hereunder 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 présentes ont expressément exigé que la présente Convention soit rédigée 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.