

**PLEASE READ THIS AGREEMENT CAREFULLY AND
IF YOU NEED A COPY OF THIS AGREEMENT FOR YOUR FILES PLEASE PRINT
BEFORE CLICKING “ACCEPT”**

ROGUE WAVE SOFTWARE, INC. (“ROGUE WAVE”), is willing to license any chosen software and related documentation and user guides (the “Software”) and educational and training materials (“Materials”), and sell any chosen maintenance and support services (“Services”) to you (“You” or “Your”), all as identified in the order You previously completed (“Order”) only on the condition that You accept all of the terms and conditions in this agreement (“Agreement”). **BY CLICKING ON THE “ACCEPT” BUTTON BELOW, YOU ARE SIGNING THIS AGREEMENT AND YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, ROGUE WAVE IS UNWILLING TO LICENSE THE CHOSEN SOFTWARE OR MATERIALS OR SELL THE CHOSEN SERVICES TO YOU, AND YOU MUST CLICK THE “DO NOT ACCEPT” BUTTON BELOW.** If You have submitted (or hereafter submit) different, additional, or other alternative terms to ROGUE WAVE, whether through a purchase order or otherwise, ROGUE WAVE objects to and rejects those terms. No contract may be formed, and ROGUE WAVE is not willing to proceed, except on the terms of this Agreement. **If You are accepting on behalf of an entity, You hereby represent that You have the authority to accept this Agreement on behalf of such entity. This Agreement is effective (the “Effective Date”) when You click the “ACCEPT” button below and ROGUE WAVE acknowledges Your acceptance at its offices in the U.S. by allowing You to proceed with the purchase of the selected items.**

1. SOFTWARE LICENSE.

1.1 License Grant. If You chose to license Software, ROGUE WAVE hereby grants You a perpetual (subject to Section 5 of this Agreement), non-exclusive, non-transferable, non-sublicensable license to install on one of Your computers the Software for use by the number of users for which You have paid the applicable fees for Your internal business purposes only.

1.2 Restrictions. You must not: (a) transfer, sublicense, or relicense the Software, or use the Software for third party transactions, commercial time-sharing, rental or service bureau use or publicly perform or publicly display the Software; or (b) cause or permit the reverse engineering (except to the extent allowed by local law), disassembly or decompilation of the Software. You may make only one copy of the Software for archival or backup purposes; no other copies shall be made without ROGUE WAVE’s prior written consent. All archival and backup copies of the Software are subject to the terms of this Agreement.

2. MAINTENANCE AND SUPPORT SERVICES.

If You chose to purchase Services on ROGUE WAVE software, ROGUE WAVE shall provide You the ROGUE WAVE Services for which you have paid the applicable fees for the particular ROGUE WAVE software applications selected on the Order to receive Services (the “Product”). A Product must be subject to a valid license from ROGUE WAVE to be eligible for Services. Services on the Product provided by ROGUE WAVE are provided in accordance with ROGUE WAVE’s standard maintenance and support and obsolescence policies for the Product, which are subject to change. A Product must be subject to a valid license from ROGUE WAVE to be eligible for Services. ROGUE WAVE shall not be responsible for any delay in, or inability to perform Services that is the result of any failure or delay by You in the performance of Your obligations as set forth in the policies. ROGUE WAVE shall have the right to (i) assign and reassign personnel as it deems appropriate in its discretion to perform the Services and (ii) subcontract the performance of Services, provided ROGUE WAVE remains liable for the Services to the same extent as if such Services had been performed by ROGUE WAVE employees.

3. EDUCATIONAL AND TRAINING MATERIALS. If You chose to license Materials, ROGUE WAVE shall provide You the Materials described in the Order. ROGUE WAVE hereby grants You a perpetual (subject to Section 5 of this Agreement), nonexclusive, non-transferable, non-sublicensable license to use the Materials for Your internal business purposes only. You may not make any copies of the Materials without ROGUE WAVE’s prior written consent.

4. FEES, PAYMENT, DELIVERY, AND TAXES. In consideration of the Software, Services, and Materials and any accompanying licenses chosen by You in the Order and provided to You by ROGUE WAVE hereunder, You shall pay ROGUE WAVE the fees set forth in the Order and any applicable Reinstatement Fees (collectively referred to herein as the “Fees”). In addition, You shall pay ROGUE WAVE for all reasonable out-of-pocket expenses incurred by ROGUE WAVE in performance of the Services, including media and shipping charges (the “Expenses”). All Fees and Expenses are quoted in U.S. dollars and You shall pay the Fees and Expenses in U.S. dollars. If You did not choose to pay the Fees by credit card in the Order, ROGUE WAVE shall invoice You for all Fees due hereunder, and all amounts billed will be due and payable within thirty (30) days of date of invoice. Any payments not received by ROGUE WAVE by the due date will be considered past due and interest will accrue at the rate of one and one-half percent (1.5%) per month or, if less, the highest rate permitted under applicable law. Delivery shall be deemed to occur when either (i) ROGUE WAVE has made the Software and Materials available for download, or (ii) ROGUE WAVE has delivered the Software or Materials to a third party shipper addressed to You (“Effective Date”). All Fees and Expenses specified in this Agreement are exclusive of, and You shall be solely responsible for, all value-added, sales, use, import, duties, customs or other taxes applicable to the transactions contemplated by this Agreement, except for any taxes based upon ROGUE WAVE’s net income. You shall reimburse ROGUE WAVE for any and all collection costs (including attorneys’ fees) incurred by ROGUE WAVE in the collection of any past due amounts owed ROGUE WAVE under this Agreement.

5. TERM AND TERMINATION.

5.1 Term. This Agreement shall continue from the Effective Date until terminated as provided herein.

5.2 Termination.

5.2.1 Software. The Software license granted under This Agreement may be terminated immediately upon written notice by ROGUE WAVE to You that You have violated Sections 1 or 7 of the Agreement or if You are past due on any payment for Software licensed under this Agreement for more than sixty (60) days.

5.2.2 Materials. The Materials licensed under this Agreement may be terminated immediately upon written notice by ROGUE WAVE to You that You have violated Sections 3 or 7 of the Agreement or if You are past due on any payment for Materials licensed under this Agreement for more than sixty (60) days.

5.2.3 Services. The Services provided under this Agreement may be terminated immediately upon written notice by ROGUE WAVE to You that You are past due on any payment for Services provided under this Agreement for more than sixty (60) days.

5.2.4 This Agreement may be terminated immediately upon written notice by either party upon the material breach by the other party of any of its obligations under this Agreement that has not been cured within thirty (30) days after the breaching party has received written notice thereof. This Agreement will terminate automatically if all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy, a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or the other party is adjudged bankrupt.

5.3 Effect of Termination. Upon the termination of this Agreement, any applicable Fees owed by You through the date of termination shall become due and payable, and You shall immediately cease using the Software, Materials, and any other deliverables not fully paid-up. Each party shall promptly return to the other all Confidential Information of the other party that it may have in its possession or control except for fully paid-up Software, Materials and Services being used by You in accordance with the terms and conditions of this Agreement. If ROGUE WAVE terminates pursuant to Section 5.2.1, all Software licenses granted herein shall immediately terminate and You shall promptly return all ROGUE WAVE Confidential Information, including all Software, and any other deliverables. If ROGUE WAVE terminates pursuant to Section 5.2.2, all Material licenses granted herein shall immediately terminate and You shall promptly return all ROGUE WAVE Confidential Information, including all Materials, and any other deliverables. Notwithstanding the termination of this Agreement for any reason, the rights and duties of the parties under Sections 1.2, 4, 6, 7, 8, 9, and 10 of this Agreement shall survive such termination and remain in full force and effect.

6. INTELLECTUAL PROPERTY. “ROGUE WAVE Property” means (a) the Software and the Materials, (b) ROGUE WAVE’s total business integration and business process management technologies, including formats, structure, design, tools, databases, and all related software (including Software and the Products),

documentation, methodologies (including the eXtensible Development Discipline), (c) any tools, databases, software, invention, development, methodology or innovation conceived, developed or supplied by ROGUE WAVE in providing the Services and Updates and other deliverables resulting from the Services, except for content and/or data provided by You, and (d) any and all derivative works, enhancements or other modifications to any of the above. Subject only to the licenses expressly granted in this Agreement, as between ROGUE WAVE and You, ROGUE WAVE shall be the sole owner of all intellectual property rights in and to the ROGUE WAVE Property. You shall assign and transfer to ROGUE WAVE any rights in the ROGUE WAVE property that you may obtain in the future. ROGUE WAVE may utilize all ideas, suggestions, feedback, improvements, data, reports or the like that You provide to ROGUE WAVE or otherwise makes with respect to the Software, Materials or Services without any obligation to You. You shall not remove any of ROGUE WAVE's or its licensor's copyright, trademark and other proprietary notices contained on or in the Software or the Materials, and You will reproduce all such notices on all copies permitted to be made by You under this Agreement.

7. CONFIDENTIAL INFORMATION.

7.1 Definition. "Confidential Information" means (a) any business or technical nonpublic information of You or ROGUE WAVE, including but not limited to any information relating to either party's products, services, prices, marketing plans, business opportunities, or personnel, (b) any other information of You or ROGUE WAVE that is specifically designated by the disclosing party as confidential or proprietary, and (c) the terms and conditions of this Agreement.

7.2 Exceptions. Confidential Information shall not include information that (a) is in or enters the public domain without breach of this Agreement through no fault of the receiving party, (a) the receiving party was demonstrably in possession of prior to first receiving it from the disclosing party without obligation of restrictions, (c) the receiving party can demonstrate was developed by the receiving party independently and without use of or reference to the disclosing party's Confidential Information, or (d) the receiving party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation.

7.3 Obligations. Each party shall exercise no less than reasonable care with respect to the handling and protection of such Confidential Information. Each party shall use the Confidential Information of the other party only during the term of this Agreement and only to perform its obligations set forth in this Agreement, and shall disclose such Confidential Information only to its employees and independent contractors as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein). Notwithstanding the above, the receiving party may disclose Confidential Information of the disclosing party pursuant to a valid order or requirement of a court or government agency, provided that the receiving party first gives reasonable written notice to the disclosing party to contest such order or requirement. Any such disclosure by the receiving party of the Confidential Information of the disclosing party, shall, in no way, be deemed to change, affect or diminish the confidential status of such Confidential Information. ROGUE WAVE hereby designates the ROGUE WAVE Property as ROGUE WAVE Confidential Information.

7.4 Duration. The obligations set forth in Section 7.3 shall remain in force until such time as the Confidential Information falls under one of the exceptions listed in Section 7.2.

8. WARRANTIES AND DISCLAIMERS.

8.1 Your Warranty. You represent and warrant that You own or have obtained all rights in Your materials and data necessary so that its use by ROGUE WAVE to provide Services to You does not violate any intellectual property rights or other rights (e.g. privacy) of a third party.

8.2 ROGUE WAVE Warranty. ROGUE WAVE warrants that (1) for a period of ninety (90) days from initial delivery of the initial release of the Software to You, the Software will, when properly installed and used in accordance with the applicable documentation, substantially conform with the specifications for the Software as described in the applicable documentation included with the Software; and (2) the Software does not infringe the U.S. patent or U.S. copyright of any third party. **YOUR SOLE REMEDY AND ROGUE WAVE'S ONLY LIABILITY FOR A BREACH OF THE FOREGOING WARRANTIES SHALL BE, AT THE OPTION OF ROGUE WAVE, THE REPAIR, REPLACEMENT, OR SUBSTITUTION OF THE SOFTWARE, OR IN THE CASE OF INFRINGEMENT, FOR ROGUE WAVE TO OBTAIN THE RIGHT TO LICENSE THE SOFTWARE TO YOU. IF NONE OF THESE OPTIONS IS COMMERCIALY PRACTICAL FOR ROGUE WAVE, ROGUE WAVE MAY TERMINATE THIS AGREEMENT. YOU DO NOT HAVE A RIGHT TO A REFUND.** ROGUE WAVE does not warrant that Your use of the Software will be error-free, virus-free or uninterrupted. ROGUE WAVE warrants that any media upon which ROGUE WAVE provides the Software to You shall be free of defects in materials and workmanship for a period of ninety (90) days from delivery of such media to You. As Your exclusive remedy and ROGUE WAVE's sole obligation for breach of this warranty, ROGUE WAVE shall provide You with a new copy of the Software in non-defective media at no additional charge. The foregoing warranties shall be null and void if You use a pre-release version of the Software, if the Software is modified by anyone other than ROGUE WAVE, if the Software is used with any other computer hardware or software not expressly listed in the documentation portion of the Software or otherwise approved by ROGUE WAVE, if the Software is damaged due to neglect, misuse, or electric or electromagnetic stress.

8.3 Disclaimer. Other than the express warranties set forth in Section 8.2, ROGUE WAVE makes no other warranty, express or implied, with respect to the Software. ROGUE WAVE HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER STATUTORY, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION TERMS AS TO QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

9. LIMITATION OF LIABILITY. IN NO EVENT SHALL ROGUE WAVE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, FORESEEABLE, RELIANCE, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY YOU, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF THE SOFTWARE, MATERIALS OR SERVICES. ROGUE WAVE SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO (i) THE ACCURACY OR COMPLETENESS OF THE SOFTWARE; (ii) LOSS OF DATA OR FOR TRANSACTIONS PERFORMED USING THE SOFTWARE; OR (iii) MODIFICATIONS TO THE SOFTWARE BY YOU, WHETHER MADE BY YOU OR ANY THIRD PARTY. ROGUE WAVE's total aggregate liability for any damages arising out of or related to this Agreement will not exceed the fees paid by You hereunder for the Software, Materials or Services at issue. The existence of one or more claims will not enlarge this limit. You acknowledge that ROGUE WAVE's pricing reflects this allocation of risk and the limitation of liability specified in this section will apply regardless of whether any limited or exclusive remedy specified in this Agreement fails of its essential purpose.

10. GENERAL TERMS.

10.1 Federal Government. This provision applies to all licenses of the Software by or for the federal government of the United States. By accepting delivery of the Software, the government hereby agrees that the Software qualifies as "commercial" computer software within the meaning of FAR Part 12.212 (October 1995), DFARS Part 227.7202-1 and 227.7202-3 (June 1995), and DFARS 252.227-014(a) (June 1995). The terms and conditions of this Agreement shall pertain to the government's use and disclosure of the Software, and shall supersede any conflicting contractual terms or conditions. If the license fails to meet the government's minimum needs or is inconsistent in any respect with federal procurement law, the government agrees to return the Software to ROGUE WAVE at the address stated above.

10.2 Export Control. The Software, Materials and Services provided by ROGUE WAVE under this Agreement may contain technical data (e.g., encryption technology) the export, re-export, transfer or sale of which is controlled by U.S. export control laws. ROGUE WAVE will export the Software, Materials and Services as per this agreement consistent with U.S. law and You agree that diversion of the Software, Materials and Services contrary to U.S. law is prohibited. Accordingly, in express consideration for receipt of the Software, Materials and Services, You agree to comply with all applicable laws that may impose registration, reporting, licensing, or other requirements on the Software, Materials and Services.

10.3 Miscellaneous. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior proposals, agreements or communications, written or oral, of the parties with respect to the Software, Services, or Materials. This Agreement may not be modified, altered or amended, except

by written instrument duly executed by both parties. No failure or delay by either party in exercising any right hereunder will operate as a waiver thereof. You shall not assign this Agreement without the prior written consent of ROGUE WAVE, which consent shall not be unreasonably withheld, except that such consent may be withheld in ROGUE WAVE's sole discretion if the proposed successor is a competitor of ROGUE WAVE. You acknowledge that ROGUE WAVE reserves the right to charge additional fees if such an assignment results in an expanded scope of use of the Software. This Agreement will be binding on the parties, their successors and permitted assigns. This Agreement will be construed under the laws of the State of Colorado, without regard to its conflicts of law principles. Any action brought in connection with this Agreement shall be brought only in the state or federal courts thereof. You consent to the exclusive personal jurisdiction of the federal and state courts in the State of Colorado and expressly and irrevocably waive any objections to venue in and jurisdiction of such courts, except that in any action involving a claim for injunctive relief or a decree for specific performance against You, ROGUE WAVE shall have the right to commence that action against You in any other court having personal jurisdiction over You and subject matter jurisdiction over the controversy. The parties hereby disclaim the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The English language version of this Agreement shall be controlling in the interpretation or application of the terms of this Agreement. In the event that ROGUE WAVE takes any action to enforce any provision of this Agreement, ROGUE WAVE shall be entitled to recover all of its attorneys' fees and costs in connection with such action. You shall comply with all foreign and domestic laws and regulations, applicable to the Software, Materials and Services. If any provision of this Agreement is found invalid or unenforceable by an arbitrator or a court of competent jurisdiction, the remaining portions shall remain in full force and effect. You agree that ROGUE WAVE may use Your name on ROGUE WAVE's customer list[s].

I HAVE READ, UNDERSTOOD AND AGREE TO THE ABOVE TERMS AND CONDITIONS OF THIS AGREEMENT

I ACCEPT

I REJECT