



STATEMENT OF WORK FOR KLOCWORK DEPLOYMENT REVIEW TWO (2) TO THREE (3) KLOCWORK PORTALS

THIS STATEMENT OF WORK FOR KLOCWORK DEPLOYMENT REVIEW - TWO (2) TO THREE (3) KLOCWORK PORTALS (the “SOW”) is by and between Rogue Wave Software, Inc., a Delaware corporation (“Rogue Wave”), and a wholly-owned subsidiary of Perforce Software, Inc., a Delaware corporation, with its principal place of business located at 400 First Avenue North, Suite 400, Minneapolis, Minnesota 55401, and the client (the “Client”) named on the duly authorized quotation issued by Rogue Wave to the Client and that is executed by Rogue Wave and Client (the “Order Form”). In all cases, the Order Form shall reference this SOW, and the parties intend that the terms contained in this SOW shall be incorporated by reference to the corresponding Order Form.

1. **Scope.** This SOW provides for a professional services engagement consisting of the delivery of Klocwork Deployment Review – **Two (2) to Three (3) Klocwork Portals**- to be performed by Rogue Wave (the “Services”). The Services are designed to help existing Klocwork customers increase their ROI by leveraging Klocwork’s advanced features and new/refresher training. The objectives for the Services are to increase developer productivity, automation and adoption by: (i) understanding the Client's current Klocwork deployment hierarchy and workflow; (ii) recommending best practices and relevant advanced features (e.g. integrations with bug tracking, pull request pages, and dashboards); and (iii) providing refresher training to existing Klocwork users and/or training for new users.
2. **Deliverables.** For each Klocwork portal reviewed, the deliverables will consist of: (i) a PowerPoint deck describing the current Klocwork deployment at Client and with recommendations on best practices; (ii) a PowerPoint deck recommending training sessions for current and new Klocwork users, and (iii) recommended training sessions.
3. **Assumptions and Prerequisites.** In order to successfully complete the Services, Client will need to provide, or make available, the following:
 - 3.1. The Client’s environment will be running on a supported system. The Klocwork system requirements can be found at: <https://docs.roguewave.com/en/klocwork/current/systemrequirements>
 - 3.2. Client has an active Klocwork subscription or maintenance and support agreement.
 - 3.3. Client has reviewed and accepted this Statement of Work.
 - 3.4. Client has selected, as stated in the Order Form, a service tier level of “Two (2) to Three (3) Klocwork Portals” that identifies the extent of the engagement (see Section 4 - Delivery Activities below).
 - 3.5. Client will provide the platform and hardware support required.
 - 3.6. Client has identified a project manager and sponsor to work jointly with the Consultant to plan activities and ensure that required Client resources are available as needed.
 - 3.7. Client’s project development team is available and completely dedicated during the scheduled time of onsite or remote delivery.
4. **Delivery Activities.** Delivery activities under this SOW will be delivered (i) remotely via Teams or similar screen-sharing applications, or (ii) onsite, as identified in the Order Form. The delivery activities will be applied up to the identified number of Klocwork portals.

These delivery activities are provided in more detail below, including the resources for both Rogue Wave and the Client.

Service Task	Resources	Deliverables/ Agenda
<p>Delivery Preparation (1-2 weeks before delivery)</p>		
Remote over Teams or similar	Consultant Client project lead	<p>Discuss service details with Client, review engagement objectives, gather information required to develop a delivery schedule.</p> <p>Develop detailed schedule.</p>
Remote over Teams or similar or onsite	Consultant Client's project lead As required, Client's sysadmin, build engineer, team lead and/or developer	<ul style="list-style-type: none"> • Review current Klocwork deployment (repeat for each portal) <ul style="list-style-type: none"> • Review Klocwork portal projects for activity and features used. • Review associated integration build environments (fixed and Continuous Integration) • Review associated developer workflow and desktop tools used. • Ask for feedback on Klocwork deployment (what works, what doesn't, and what could be improved)
<p>Delivery</p>		
Remote over Teams or similar or onsite	Consultant Client's project lead Client's sysadmin and/or build engineer	<ul style="list-style-type: none"> • Recommendations Presentation (repeat for each portal) <ul style="list-style-type: none"> • PowerPoint presentation on best practice recommendations to increase developer productivity, automation and adoption. • PowerPoint presentation on recommended new and refresher training sessions with emphasis on the best practices features.
Remote over Teams or similar or onsite	Consultant Client's Klocwork users (as required)	<ul style="list-style-type: none"> • Klocwork Training sessions (as per recommendations) <ul style="list-style-type: none"> • One or more training sessions on new and/or recommended features. • Attended by relevant Klocwork users.
Remote over Teams or similar or onsite	Consultant Client's project lead	<ul style="list-style-type: none"> • Post-engagement review <ul style="list-style-type: none"> • Ensure satisfactory delivery

5. **Exclusions from the Scope of the Deployment Review Services.** The following items are not in scope for this delivery:

- 5.1. Larger configurations (more Klocwork portals).
- 5.2. Assistance with the implementation of recommendations; except for training sessions.

If Client desires assistance with any of the above items, then Client and Rogue Wave will discuss the scope of an additional engagement, along with the pricing for such services, and the parties will enter into a separate SOW to provide for any of the additional services to be provided.

6. **Roles, Responsibilities and Expectations.**

6.1. In order to successfully complete the Services, it is important that roles and expectations are clear to both the Client's and to Rogue Wave's staff. Where appropriate, a single individual may fill several of the roles listed below. Rogue Wave reserves the right to use subcontractors in those roles it deems appropriate. Use of any subcontractor does not relieve Rogue Wave of any of its obligations as set forth herein.

6.2. The Client is expected to provide, as needed, either prior to, or at the commencement of, the engagement:

- 6.2.1. A sponsor or project lead who is assigned to be responsible for directing the activities of the consultants and ensuring results are delivered per Client's written and outlined project deliverables.
- 6.2.2. Access to application production and staging servers by Rogue Wave for the purpose of delivering the professional services.
- 6.2.3. An employee or an authorized third party contractor of Client who is readily available (this could be the project sponsor or project lead mentioned in Section 6.2.1 above) to Rogue Wave who is familiar with the project, this SOW, and the parties agreement on how to resolve issues and facilitate communications.
- 6.2.4. An employee or an authorized third party contractor of Client shall provide the product knowledge or information to the Rogue Wave resources on products that are required for development, maintenance, and support activities.
- 6.2.5. Adequate translation to Rogue Wave staff of any product, documentation, or other resource that is required by Rogue Wave to engage in development, maintenance, or support activities.
- 6.2.6. Identification of a technical resource who will be the primary point of contact for this project who is authorized to provide resolutions to technical queries related to Rogue Wave.
- 6.2.7. Provide stable VPN connectivity between Rogue Wave and the systems where development collaboration will occur, either onsite or in a remote capacity.
- 6.2.8. An acceptable and secure means for free communication with the outside network for the purposes of communicating and accessing other resources both internal and external to Rogue Wave for the purposes of completing the project.

6.3. To facilitate the smooth delivery of the engagement, the following assumptions apply:

- 6.3.1. The Client will provide the staff and resources as described in Section 6.2 above.
- 6.3.2. The engagement will begin at a date to be determined and negotiated between Rogue Wave and the Client after receipt of a signed purchase order.
- 6.3.3. Rogue Wave and the Client agree to collaborate and follow a change management process to evaluate an appropriate course of action if it is determined that Rogue Wave will incur costs in excess of the Services due to changes in Client requirements.
- 6.3.4. Rogue Wave will notify the Client in writing if Rogue Wave believes inadequate attention or personnel are being devoted to the project. The Client agrees to address these deficiencies within 5 days of receiving written notice.
- 6.3.5. Should any of these assumptions prove to be incorrect or incomplete, Rogue Wave reserves the right to modify the scope and/or pricing as documented in these Terms and the corresponding SOW.

7. **Project Pricing.**

The price for the engagement is as follows:

Item	Extent	Price
Klocwork Deployment Review	Two (2) to Three (3) Klocwork Portals	As stated on the Order Form

Unless a later date is expressly agreed, services must be scheduled and delivered within 3 months of purchase. Pre-paid fees for services not performed within the applicable time period will be forfeited. Time and materials services together with any applicable travel and expenses will be billed monthly in arrears at the rate specified herein which shall be guaranteed for a period of 3 months from the date on the Order Form. Customer is responsible for scheduling services subject to Rogue Wave’s availability. Scheduled services may be cancelled with a minimum of one (1) weeks’ notice; provided, however, that customer will be responsible for any unrecoverable travel and living expenses incurred by Rogue Wave as a result of such cancellation. As this is a fixed fee SOW, there are no minimum durations for the increments in which these services are delivered.

8. **Miscellaneous.**

8.1. Entire Agreement. This SOW, the Order Form, and the Professional Services Term and Conditions that are attached hereto as Exhibit A and are incorporated herein by reference (the “Terms”), constitute 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. If Client issues a Client purchase order, or any other Client generated documentation, and the terms and conditions conflict with this SOW, the Terms and/or the Order Form, the terms and conditions contained in the Terms, this SOW, and the Order Form, control. For purposes of clarity, no terms or conditions, including any pre-printed or boilerplate terms and conditions, stated in any Client purchase order, or in any other Client documentation, shall be incorporated into or form any part of this SOW, the Order Form, or the Terms, and all such terms or conditions shall be null and void and of no force and effect.

EXHIBIT A
PROFESSIONAL SERVICES GENERAL TERMS AND CONDITIONS

ROGUE WAVE SOFTWARE, INC., A DELAWARE CORPORATION (“ROGUE WAVE”), AND A WHOLLY OWNED SUBSIDIARY OF PERFORCE SOFTWARE, INC., A DELAWARE CORPORATION, PROVIDES PROFESSIONAL SERVICES PURSUANT TO THESE PROFESSIONAL SERVICES TERMS AND CONDITIONS (THE “TERMS”).

BY ACCEPTING OR SIGNING A DULY AUTHORIZED QUOTATION ISSUED BY ROGUE WAVE TO THE CLIENT (THE “ORDER FORM”) OR A STATEMENT OF WORK (A “SOW”) THAT REFERENCES THESE TERMS, OR ACCESSING OR USING ROGUE WAVE’S SERVICES, CLIENT CONFIRMS THAT CLIENT HAS READ THESE TERMS AND ACCEPTS THEM TOGETHER WITH THE APPLICABLE ORDER FORM AND STATEMENT OF WORK AS A BINDING LEGAL AGREEMENT BETWEEN CLIENT AND ROGUE WAVE (THESE TERMS, THE SOW, AND THE ORDER FORM COLLECTIVELY, THE “AGREEMENT”).

NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS CLIENT MAY REFERENCE OR PROVIDE, ROGUE WAVE’S OFFER OR ACCEPTANCE (AS APPLICABLE) TO ENTER INTO AN AGREEMENT WITH CLIENT WITH RESPECT TO THE SERVICES IS EXPRESSLY LIMITED TO THIS AGREEMENT, THE SOW, AND THE ORDER FORM, AND IS CONDITIONED ON CLIENT’S ASSENT HERETO.

THESE TERMS, THE SOW, AND THE ORDER FORM, CONSTITUTE THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE PARTIES AND SUPERSEDE ANY AND ALL PREVIOUS COMMUNICATIONS, REPRESENTATIONS OR AGREEMENTS, WHETHER WRITTEN OR ORAL, WITH RESPECT TO THE SUBJECT MATTER HEREOF. ANY TERM OR CONDITION IN ANY CLIENT PURCHASE ORDER OR OTHER DOCUMENT FURNISHED BY CLIENT THAT IS IN ADDITION TO OR INCONSISTENT WITH THESE TERMS, THE SOW, AND THE ORDER FORM IS HEREBY EXPRESSLY REJECTED.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. SERVICES.

1.1 Subject to the terms and conditions described herein, Rogue Wave will perform the services (“Services”) as described in the Order Form, and/or the SOW, as applicable, in material conformance with the specifications and schedule specified in the relevant Order Form and/or SOW.

1.2 Client shall provide, at no charge to Rogue Wave, office space, services, and equipment as Rogue Wave reasonably requires to perform the Services. Client understands that Rogue Wave’s performance is dependent in part on Client’s actions. Accordingly, Client will timely provide Rogue Wave with the necessary items and assistance and any dates or time periods relevant to Rogue Wave’s performance will be extended appropriately and equitably to reflect any delays due to Client.

2. COMPENSATION; BILLING PROCEDURES; TAXES.

2.1 Client will pay Rogue Wave the fees for the Services in accordance with the relevant Order Form or SOW; provided that if no payment arrangement is so specified, Rogue Wave shall submit monthly invoices to Client. Client shall pay to Rogue Wave the fees incurred within thirty (30) days of the receipt of the invoice. Late payments will bear interest at the rate of 1.5% per month, or, if lower, the maximum rate allowed by law. All payments under this Section 2 shall be made in United States Dollars.

2.2 Unless otherwise stated in the Order Form or SOW, Client shall reimburse Rogue Wave for the reasonable and actual costs of travel and other incidental expenses incurred in connection with Services provided at any location other than Rogue Wave’s. Rogue Wave shall submit monthly invoices for such expenses, in arrears, to Client. Client shall pay to Rogue Wave the amounts set forth on each such invoice within thirty (30) days of the receipt of the invoice.

2.3 Client shall, in addition to the other amounts payable under this Agreement, pay all applicable fees, duties, withholdings, sales, use, value added or other taxes, federal, state, local or otherwise, however designated, which are

levied or imposed by reason of the transactions contemplated by this Agreement, excluding only taxes based on Rogue Wave's net income. Client shall hold Rogue Wave harmless from all claims and liability arising from Client's failure to report or pay any such taxes, duties and assessments.

3. CONFIDENTIAL INFORMATION.

3.1 Each of Rogue Wave and Client acknowledge and agree that the other party has valuable, proprietary, and confidential information, including, but not limited to, information relating to its business, software programs, including the documentation and the source code, technology, know-how, ideas, algorithms, testing procedures, structure, interfaces, specifications, bugs, problem reports, any information or reports generated from the software, analysis and performance information, results of benchmark tests, these Terms, including pricing terms, and other technical, business, product, marketing and financial information, plans, and data product plans, project implementation, programming methodologies, and processes (the "**Confidential Information**"), regardless of whether the Confidential Information has been reduced to a tangible form, which Confidential Information may be disclosed by one party (the "**Discloser**") to the other party (the "**Recipient**") during the performance of the Services. Confidential Information also includes any information that the Discloser identifies or marks as confidential or proprietary at the time of disclosure, or that reasonably appears to be proprietary or confidential in nature because of legends or other markings, the circumstances of disclosure, or the nature of the information itself. Each party acknowledges that this Agreement does not give the other party any license or other proprietary right with respect to Discloser's Confidential Information. Each party agrees to hold in confidence and not to disclose any Confidential Information of the Discloser to any third party, except for independent contractors engaged by the Recipient with a need to know and an obligation to restrict disclosure of such Confidential Information. With respect to Confidential Information disclosed under this Agreement, the Recipient shall: (a) hold the Confidential Information in confidence, exercising a degree of care equal to or greater than the care used by the Recipient to protect its own proprietary or confidential information that it does not wish to disclose; (b) restrict disclosure of the Confidential Information solely to those directors, officers, employees, affiliates, and/or agents/consultants with a need to know and not disclose it to any other third party; (c) advise those parties listed in (b) to whom the Confidential Information was disclosed of their obligations with respect to the Confidential Information; (d) use the Confidential Information only in connection with the Services; and (e) not copy or distribute such Confidential Information or knowingly allow anyone else to copy or distribute such Confidential Information, and any and all copies shall bear the same notices or legends, if any, as the originals. Each party agrees not to reverse engineer or attempt to derive the composition or underlying information, structure, or ideas of any Confidential Information.

3.2 The confidentiality obligations set forth in this Section 3 do not apply to Confidential Information that: (a) is generally known to the public through no improper action by Recipient; (b) was legitimately in Recipient's possession prior to its disclosure by Discloser; (c) becomes available to Recipient on a non-confidential basis from a source other than the Discloser, provided that such source is not acting in violation of a confidentiality agreement with Discloser, or is otherwise prohibited from transmitting the information to the Recipient by a contractual, legal, or fiduciary obligation owed to the Discloser; or (d) was or is independently developed by or for Recipient without use of or reference to the Confidential Information.

3.3 If the Recipient is required to disclose any Confidential Information of the Discloser to a tribunal, court, or governmental or regulatory agency, then, unless the Recipient is restricted by any law or order, the Recipient will provide the Discloser written notice in advance of the disclosure to permit the Discloser to obtain protective orders maintaining the confidentiality of the Confidential Information. At the Discloser's request and expense, Recipient agrees to provide reasonable assistance if the Discloser wishes to contest the disclosure.

3.4 Upon termination of the Agreement, or upon written demand by the Discloser, whichever is earlier, Recipient shall return all Confidential Information (including any copies thereof) in its possession or control. Notwithstanding the foregoing, the Recipient, and the Recipient's representatives, will not be obligated to erase any Confidential Information that is in an archived computer backup system in accordance with Recipient's respective security and/or disaster recovery procedures and Recipient may retain copies of the Confidential Information to the extent required to comply with legal or regulatory requirements or to demonstrate compliance with fiduciary duties. Any Confidential Information that is not destroyed by the Recipient pursuant to this Section 3.4 shall remain confidential, subject to the terms of this Agreement.

4. TERM/TERMINATION.

4.1 This Agreement shall commence as provided in the Order Form or SOW (the “Effective Date”) and continues thereafter, unless terminated earlier as described in this Section 4.

4.2 If either party materially breaches this Agreement (including failure to make any payment hereunder), the other party may terminate this Agreement by giving the breaching party thirty (30) days (or ten (10) days in the case of nonpayment) written notice of such breach, unless the breach is cured within the applicable notice period.

4.3 In the event that there is no then-active SOW, either party may terminate this Agreement for convenience by providing thirty (30) days’ written notice to the other party. Client will not be entitled to receive a refund in the event this Agreement is terminated for convenience.

4.4 Upon termination of this Agreement, Client agrees to pay Rogue Wave all amounts due or accrued as of the date of such termination. Upon termination of this agreement for any reason, if requested in writing, each party shall return to the other party or destroy (and so certify to the other party) any Confidential Information obtained from the other party. Sections 2, 3, 4, 5.2, 6, 7 and 8 shall survive any termination or expiration of this Agreement.

5. WARRANTY AND DISCLAIMER.

5.1 Rogue Wave represents and warrants that the Services will be performed in a good and workmanlike manner. Client’s sole and exclusive remedy under the foregoing warranty shall be for Rogue Wave to use commercially reasonable efforts to re-perform any substantially defective Services reported to Rogue Wave in writing within a reasonable time following the initial performance of such Services.

5.2 EXCEPT AS SET FORTH IN THIS SECTION 5, ROGUE WAVE DISCLAIMS ALL WARRANTIES, IMPLIED OR EXPRESSED, INCLUDING WITHOUT LIMITATION ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND THE STATED EXPRESS WARRANTIES, IF ANY, ARE IN LIEU OF ALL OTHER OBLIGATIONS AND PERFORMANCE LIABILITIES ARISING OUT OF OR IN CONNECTION WITH THE RENDERING OF THE SERVICES HEREUNDER.

6. INTELLECTUAL PROPERTY; OWNERSHIP. As between the parties, Rogue Wave shall own and retain all rights, title, and interest (including all patent rights, copyright rights, trade secret rights, and other intellectual property and proprietary rights) in and to the Services and to any software provided by Rogue Wave to Client pursuant to a separate agreement (“Software”). Notwithstanding anything to the contrary herein, Client agrees that (a) Client obtains no right, title, license or other interest under this Agreement in or to any part of any Software, (b) Client’s possession, reproduction and use of the Software shall be subject to, strictly in accordance with and solely governed by the provisions of the applicable software agreement between Rogue Wave and Client, (c) this Agreement shall not be construed to amend or modify in any respect any such software agreement (including without limitation, the scope of any license granted thereunder) and (d) Rogue Wave (and its licensors) shall own and retain all rights, title and interests (including all intellectual property and proprietary rights) in and to the Software.

7. INDEMNITY. Rogue Wave shall, at its expense, defend or settle any action against Client to the extent based upon a claim that Rogue Wave’s provision of the Services infringes any existing United States copyright, trademark, or trade secret and will pay such damages or costs as are finally awarded against Client attributable to such action, provided that Client (i) notifies Rogue Wave promptly in writing of any such action, (ii) gives Rogue Wave sole control of the defense and/or settlement of such action, and (iii) gives Rogue Wave all reasonable information and assistance (at Rogue Wave’s expense excluding time spent by Client’s employees or consultants) in connection with such action.

8. GENERAL.

8.1 General Skills & Knowledge. Notwithstanding anything to the contrary in this Agreement, Rogue Wave shall not be prohibited or enjoined at any time by Client from utilizing any “skills or knowledge of a general nature” acquired during the course of performing the Services specified under this Agreement. For purposes of this Agreement, “skills or knowledge of a general nature” shall include, without limitation, information publicly known or that could reasonably have been acquired in similar work performed for another Client.

8.2 Non-Solicitation of Personnel. During the term of this Agreement, and for a period of one (1) year thereafter, Client will not, either directly or indirectly, solicit the employees and third party agents of Rogue Wave without the prior written consent of Rogue Wave.

8.3 Excusable Delay. 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.

8.4 Independent Contractors. Each party will be and act as an independent contractor and not as an agent or partner of, or joint venture with, the other party for any purpose related to this Agreement or the transactions contemplated by this Agreement, and neither party by virtue of this Agreement will have any right, power or authority to act or create any obligation, expressed or implied, on behalf of the other party.

8.5 Assignment. Client shall not assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary or by operation of law, without the prior written consent of Rogue Wave. Rogue Wave may assign or transfer this agreement to any successor by way of merger, acquisition, or sale of all or substantially all of the assets relating to this agreement. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties' respective successors and permitted assigns.

8.6 Governing Law. This Agreement shall in all respects be governed by the laws of the State of Minnesota without reference to its principles of conflicts of laws. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the federal and state courts within Hennepin County, Minnesota. Each party hereby irrevocably consents to the personal and exclusive jurisdiction and venue of these courts.

8.7 Notices. All notices provided for in this Agreement will be in writing and will be personally delivered, sent by reputable overnight courier service (delivery charges prepaid), or sent by registered or certified mail, postage prepaid, return receipt requested, to any party at the address specified for each party in the SOW or in the Order Form. All notices, demands, and other communications hereunder may be given by any other means (including electronic mail), but will not be deemed to have been duly given unless and until the intended recipient actually receives it. Notice given by electronic mail will be deemed to have been given when sent so long as no electronic notice is delivered to the sending party indicating that the electronic mail could not be delivered.

8.8 Limitation of Liability. ROGUE WAVE'S TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE FEES PAID BY CLIENT HEREUNDER. CLIENT FURTHER AGREES THAT NEITHER ROGUE WAVE NOR ITS LICENSORS OR SUPPLIERS, WILL BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. IN NO EVENT WILL ROGUE WAVE, ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES THAT THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART ON THESE LIMITATIONS, AND FURTHER AGREES THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

8.9 Miscellaneous. This Agreement, including any SOW's and Order Forms issued in connection therewith, constitute 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. If Client issues a Client purchase order, or any other Client generated documentation, and the terms and conditions conflict with this Agreement, the SOW, and/or the Order Form, the terms and conditions contained in this Agreement, the Order Form, and the SOW, control. For purposes of clarity, no terms or conditions, including any pre-printed or boilerplate terms and conditions, stated in any Client purchase order, or in any other Client documentation, shall be incorporated into or form any part of the Agreement, the SOW, and the Order Form, and all such terms or conditions shall be null and void and of no force and effect. No waiver under this Agreement shall be valid or binding unless set forth in writing

and duly executed by the party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. Any delay or forbearance by either party in exercising any right hereunder shall not be deemed a waiver of that right. The parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement. The parties shall, in the performance of their respective obligations under this Agreement, comply with all applicable laws and regulations.