



## OPENLOGIC® OPEN SOURCE SERVICES AGREEMENT

**IMPORTANT –THIS OPEN SOURCE SERVICES AGREEMENT (THE “TERMS”) CONTAIN THE TERMS AND CONDITIONS THAT GOVERN YOUR ACCESS TO AND USE OF ANY OPEN SOURCE SOFTWARE PACKAGES (THE “OSS PACKAGE(S)”) MADE AVAILABLE BY ROGUE WAVE SOFTWARE, INC., A DELAWARE CORPORATION, AND A WHOLLY-OWNED SUBSIDIARY OF PERFORCE SOFTWARE, INC. (“ROGUE WAVE”), AS WELL AS THE TERMS AND CONDITIONS OF ANY SUPPORT SERVICES THAT YOU PURCHASE FOR ANY OF THE OSS PACKAGES OR ANY OTHER OPEN SOURCE PACKAGE AND IS A LEGAL AGREEMENT BETWEEN ROGUE WAVE AND YOU, OR THE ENTITY YOU REPRESENT (“YOU” OR THE “CUSTOMER”). THESE TERMS TAKE EFFECT ON THE EARLIER TO OCCUR OF (I) WHEN YOU CLICK AN “I ACCEPT” BUTTON OR CHECK BOX PRESENTED WITH THESE TERMS, BY SIGNING THE ORDER (AS DEFINED HEREIN) PROVIDED BY ROGUE WAVE, OR WHEN YOU DOWNLOAD OR USE ANY OF THE OSS PACKAGES, OR PURCHASE SUPPORT SERVICES FOR THE OSS PACKAGES OR ANY OTHER OPEN SOURCE PACKAGE (THE “EFFECTIVE DATE“). YOU REPRESENT TO US THAT YOU ARE LAWFULLY ABLE TO ENTER INTO CONTRACTS (E.G., YOU ARE NOT A MINOR). IF YOU ARE ENTERING INTO THIS AGREEMENT FOR AN ENTITY, SUCH AS THE COMPANY YOU WORK FOR, YOU REPRESENT TO US THAT YOU HAVE LEGAL AUTHORITY TO BIND THAT ENTITY. YOU SHOULD CAREFULLY READ THESE BEFORE USING THE SERVICES PROVIDED BY CLICKING ON THE “ACCEPT” OR “YES” BUTTON IN RESPONSE TO THE INQUIRY AS TO ACCEPTANCE OF THE TERMS, BY SIGNING THE ORDER (AS DEFINED HEREIN) PROVIDED BY ROGUE WAVE, OR BY ACCESSING OR USING THE SERVICES AS DESCRIBED HEREUNDER, IT INDICATES ACCEPTANCE OF, AND AGREEMENT TO, AND LEGALLY BINDS, YOU, AND YOUR EMPLOYER, AS APPLICABLE (COLLECTIVELY THE “CUSTOMER”), AND ROGUE WAVE, TO THESE TERMS (INCLUDING ANY TERMS, CONDITIONS, AND RESTRICTIONS CONTAINED IN ANY ORDER RELATING TO THESE TERMS). IF THE CUSTOMER DOES NOT ACCEPT AND AGREE TO THE TERMS, THEN DO NOT ACCESS OR OTHERWISE USE THE SERVICES OFFERED HEREUNDER.**

**THE RIGHT TO USE THE SERVICES DESCRIBED HEREUNDER IS CONDITIONAL UPON ACCEPTANCE OF THESE TERMS, UNLESS THE CUSTOMER HAS ENTERED INTO A WRITTEN AND DULY SIGNED AGREEMENT WITH ROGUE WAVE, IN WHICH CASE SUCH SIGNED AGREEMENT WILL GOVERN THE CUSTOMER’S USE OF THE SERVICES.**

**THESE TERMS 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 PURCHASE ORDER OR OTHER DOCUMENT FURNISHED BY CUSTOMER THAT IS IN ADDITION TO OR INCONSISTENT WITH THESE TERMS IS HEREBY EXPRESSLY REJECTED.**

**1. Support Services.** Rogue Wave will provide technical support as provided in these Terms (the “Services”) for the specific open source software package(s) (“Supported Package(s)”) that are identified on a Rogue Wave quote that has been accepted by Customer, and/or Customer has raised a purchase order for, and for which Rogue Wave has sent an invoice to Customer (the “Order”). The Services will be provided for the period and quantities identified on the Order. Technical support consists of assistance with problem resolution, defects, and "how to" questions as well as advice and recommendations on installation and configuration. Technical support incidents can be submitted via email or by phone. Each single unique defect or question about a Supported Package will be counted as an incident. Unless otherwise indicated at the time of purchase, Customer may submit an unlimited number of technical support incidents for Supported Packages. Customer acknowledges that Rogue Wave is under no obligation to provide support for any portion of the Supported Packages for which Customer has not purchased support. Details about the technical support process, response times, types of issues, and severity of issues are provided in the Open Source Support Services terms, a copy of which can be found at: <https://www.perforce.com/sites/default/files/pdfs/oss-support-sla.pdf>.

**2. Limitations on Support.** Rogue Wave will have no obligation to provide technical support, and Rogue Wave may cease providing the Services in the case of, or with respect to, any incident that is in whole or in part due to, caused by, or resulting from any of the following: (i) a breach by Customer of these Terms; (ii) the

operational characteristics of Customer's hardware, instances, or infrastructure; (iii) any third party products, software, hardware, equipment, content, data or information, and any modifications, improvements, updates, new versions or new releases thereto or thereof, not provided by the open source community; (iv) any open source package version that has been sunsetted by its community or any version that is greater than current minus 2 major releases back; (v) use of any open source package after Rogue Wave has notified Customer to cease use thereof under these Terms; or (vi) Customer's negligence, abuse, misapplication, or misuse of the Supported Packages or the Services. Rogue Wave will have no liability for any changes required by Customer's hardware or software configuration that may be necessary to use any Supported Package due to a workaround, error correction, or maintenance release.

**3. Fees, Term, and Termination.** Customer will be billed by Rogue Wave as provided in the Order. The term of these Terms will commence on the Effective Date and will remain in effect until terminated by either party as provided below.

**3.1. Termination for Breach.** These Terms may be terminated by either party if the other party breaches any material provision of these Terms and fails to cure the material breach within 30 days after receiving written notice thereof from the non-breaching party. If Rogue Wave terminates for an uncured breach by Customer, Customer will cease using the Services provided under these Terms and Rogue Wave may cease performing all Services being provided under the applicable Order. If Customer terminates for an uncured breach by Rogue Wave, Rogue Wave will refund Customer pro rata any unused pre-paid fees paid to Rogue Wave.

**3.2. Termination for Convenience.** Customer may terminate these Terms for convenience upon 14 days' advance written notice to Rogue Wave. In such event, Customer will forfeit any pre-paid fees and will remain liable for any remaining payment installments or other fixed price fees as per any outstanding Order. Termination for convenience under this section will also terminate any outstanding Orders.

**3.3. Effect of Termination.** Upon any termination of these Terms: (a) any fees or expenses owed to Rogue Wave under these Terms or any applicable Order before such termination will be immediately due and payable; (b) each party will promptly destroy or return to the other party all property and equipment of the other party (including any Confidential Information as defined herein) in its possession or control, including all copies thereof; and (c) upon request, each party will certify in writing to its compliance with this section.

#### **4. Ownership and License**

**4.1. Customer Technology.** Any information, data, content, software, methodologies, methods, techniques, concepts, systems, procedures, know-how, or inventions ("**Technology**") of Customer that were acquired, developed or created by, or licensed to Customer prior to the Effective Date or independent from these Terms ("**Customer Technology**"), and all intellectual property rights therein and relating thereto throughout the world, including, without limitation, all copyrights, trademarks, service marks, trade secrets, patents, moral rights, contract rights and any and all other legal rights protecting intangible proprietary information (collectively, "**IPR**"), are and will remain Customer's exclusive property. During the term of these Terms, Customer may choose to provide Rogue Wave with access to Customer's Technology to facilitate Rogue Wave in providing the Services, in which case Customer grants to Rogue Wave all rights and licenses in and to the Customer's Technology as may be necessary for Rogue Wave to complete its obligations under these Terms.

**4.2. Open Source Acknowledgement.** The Supported Packages are comprised of open source software, which such open source software is subject to the terms of the open source software license(s) accompanying or otherwise applicable to that open source software. Customer acknowledges that Customer's own distribution or deployment of instances containing or linking to the Supported Packages or any other open source software may trigger open source license requirements for which Customer is responsible. Nothing in these Terms limits Customer's rights under, grants additional rights to, or grants rights to Customer that supersede the terms of any applicable open source software license.

**4.3. Open Source Community.** In the process of providing the Services, Rogue Wave occasionally finds bugs and errors in open source software as well as issues in how certain open source software packages work together. Rogue Wave will make commercially reasonable efforts to work with the affected open source communities to resolve any such bugs or defects, and Rogue Wave will contribute those changes back to the community for incorporation in future releases. Due to the nature of open source development, Rogue Wave cannot guarantee that the open source communities will accept any bug or defect fixes offered by Rogue Wave.

**4.4. Rogue Wave Technology.** All deliverables, any technology, or other idea, conception, invention, reduction to practice, discovery, or development provided or made by or on behalf of Rogue Wave, and any modification, enhancement, improvement, or derivative work thereto or thereof (collectively, "**Rogue Wave Technology**"), and all IPR created therein and thereto, are and will remain the exclusive property of Rogue Wave.

**4.5. License.** Subject to the terms and conditions of these Terms, including payment of all applicable fees when due, Rogue Wave grants to Customer a non-exclusive, non-transferable, worldwide license to use for Customer's own internal business purposes to any deliverables provided to Customer by Rogue Wave under these Terms. To the extent any deliverable hereunder is a derivative work, modification, patch, or script of or directly relating to an open source software project (each an "**Open Source Deliverable**"), Rogue Wave will license such Open Source Deliverable under the same open source software license as the open source project to which it relates. Any other non-commercial code created and supplied directly by Rogue Wave for the Supported Packages will be licensed under and governed by the MIT License. The terms of the open source software licenses apply to the open source software independent of the terms of the MIT License or these Terms. Any patches or other materials provided by Rogue Wave under these Terms are provided "as-is" with no warranty from Rogue Wave.

**5. Customer's Comments and Feedback.** In the course of providing Customer with technical support, Customer may provide comments, suggestions, and other feedback regarding the Supported Packages, the support services, or related topics to Rogue Wave. Customer agrees that Rogue Wave will be free to use any such feedback Customer provides for any purpose, including, without limitation, implementing changes based on Customer's feedback to the Supported Packages, support, or other offerings without attribution or compensation to Customer.

## **6. Warranties.**

**6.1. General.** Each party represents and warrants to the other party that: the performance of such party's obligations hereunder does not and will not violate any law, rule, or regulation applicable to such party.

**6.2. Rogue Wave.** Rogue Wave will perform all Services in a professional and workmanlike manner and according to the description on the applicable Order. If Rogue Wave fails to comply with the previous sentence, Rogue Wave will, at its sole discretion, and as Customer's sole remedy and Rogue Wave's sole obligation for any such failure: (a) re-perform the Services in a manner that resolves the alleged failure; or (b) refund any fees paid by Customer attributable to the portion of the Services that are the subject of the failure.

**7. Disclaimer.** THE WARRANTIES SET FORTH IN SECTION 6 (Warranties) ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY ROGUE WAVE UNDER THESE TERMS AND ROGUE WAVE SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO THE SERVICES, DELIVERABLES AND ANY OTHER SUBJECT MATTER OF THESE TERMS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY OR MERCHANTABILITY.

**8. Limitation of Liability.** ROGUE WAVE WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THESE TERMS (HOWEVER ARISING, INCLUDING NEGLIGENCE), INCLUDING, BY WAY OF EXAMPLE, LOST REVENUE, LOST PROFITS, BUSINESS INTERRUPTION, AND INJURY TO REPUTATION, EVEN IF ROGUE WAVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF ROGUE WAVE RELATING TO THESE TERMS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER FOR SUPPORT PROVIDED BY ROGUE WAVE DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO SUCH LIABILITY.

## **9. Confidential Information.**

**9.1. Confidential Information.** For purposes of these Terms, "**Confidential Information**" means any data or information regarding the business, finances, services or technology of either party provided to or otherwise obtained by the other party, including, without limitation, technical, marketing, financial, pricing, employee, and planning information, and any other data or information received or otherwise obtained under these Terms that a reasonable person should have known, under the circumstances, was confidential or proprietary.

**9.2. Protection.** Each party (the “**Receiving Party**”) may from time to time receive or otherwise obtain Confidential Information from the other party (the “**Disclosing Party**”). The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by these Terms, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of these Terms and who are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will protect the Disclosing Party’s Confidential Information in the same manner as the Receiving Party protects its own confidential information of a similar nature and with no less than reasonable care.

**9.3. Exceptions.** The Receiving Party’s obligations with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already lawfully known to the Receiving Party as of the Effective Date; (b) is disclosed to the Receiving Party after the Effective Date by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party, becomes, generally available to the public; or (d) is independently developed by the Receiving Party without access to, use of, or reference to, the Disclosing Party’s Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) necessary for the Receiving Party to enforce its rights under these Terms in connection with a legal proceeding; or (ii) required by law or by the order of a court of similar judicial, regulatory or administrative body, provided that the Receiving Party notifies the Disclosing Party in advance of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party’s reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

## **10. General**

**10.1. Export.** Customer will comply with all applicable export and import laws and regulations in Customer’s use of the Supported Packages. Customer represents that Customer is not barred from receiving services under U.S. laws or other applicable jurisdiction, including, without limitation, the Denied Persons List and the Entity List, and other lists issued by the U.S. Department of Commerce, Bureau of Industry and Security. Customer represents that Customer is not located in, under the control of, or a national or resident of, any country to which the United States has embargoed goods.

**10.2. Assignment.** These Terms, or any of Customer’s rights and obligations under these Terms, cannot be assigned or otherwise transferred, in whole or in part, without the prior written consent of Rogue Wave, and any such attempted assignment or transfer by Customer in violation of the foregoing will be null and void.

**10.3. Choice of law.** These Terms will be governed by the laws of the State of Minnesota in the United States of America, without regard to conflicts of law principles. The federal and state courts located in Minneapolis, Minnesota (and any other courts having jurisdiction over matters arising in Minneapolis, Minnesota) will have exclusive jurisdiction over any disputes arising under these Terms and the parties hereby irrevocably consent to the personal jurisdiction of such courts. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Terms.

**10.4. Force Majeure.** Neither party will be deemed to be in breach of these Terms, nor otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under these Terms 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 thirty (30) days or more, the party not affected may terminate these Terms upon providing seven (7) days’ advance written notice.

**10.5. Relationship of parties.** These Terms does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between Customer and Rogue Wave. There are no third-party beneficiaries to these Terms.

**10.6. Waiver.** All waivers under these Terms must be in writing. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**10.7. Survival.** Sections 3 (Fees, Term, and Termination), 4 (Intellectual Property Rights), 5 (Customer's Comments and Feedback), 7 (Disclaimer), 8 (Limitation of Liability), 9 (Confidential Information), and 10 (General) will survive termination or expiration of these Terms.

**10.8. Severability.** If any provision of these Terms is held to be unenforceable, that provision will be modified so as to be enforceable, or if such modification is not possible, that provision will be removed, and the remaining provisions will remain in full force.