HYRDAEXPRESS LICENSE AGREEMENT

This HydraExpress® Software License Agreement (the "**Agreement**") applies to the provision of the HydraExpresss product identified on the Order Form (defined below) by Perforce Software, Inc., a Delaware corporation, on behalf of itself and its Affiliates (defined below) ("**Perforce**") to the customer entity identified on such Order Form (defined below) ("**Licensee**"). To the extent there is any conflict between the Order Form, and this Agreement, such conflict shall be resolved pursuant to the following order of precedence: (i) an amendment to this Agreement; (ii) the Order Form; (iii) and the Agreement. Perforce and Licensee are referred to in this Agreement each as a "Party" and together as the "Parties."

1. DEFINITIONS.

1.1 "Affiliate(s)" means any natural person or entity that directly or indirectly controls or is controlled by or is under common control with a Party. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Party whether through the ownership of voting securities, by contract, or otherwise.

1.2 "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.

1.3 "Licensed Computer" means a specific physical computing device consisting of a specific number of physical CPUs and cores, owned by Licensee, for which Licensee has paid the applicable deployment and use license fees (including any applicable premiums for cross-platform deployment) required to authorize Licensee to deploy and use Applications on such device. Deployment and use licenses for Licensed Computers are priced on a platform specific, per product, per physical core basis.

1.4 "Licensed Developer" means a natural person employed by or under contract to Licensee for whom Licensee has paid the applicable development license fees required to authorize such person to use the Licensed Software to develop Applications on Licensee's behalf. Licenses for Licensed Developers are priced on a per individual, per product basis.

1.5 "Licensed Instance" means a specific private computing environment owned by Licensee for which Licensee has paid the applicable deployment and use license fees required to authorize Licensee to deploy Applications on the instance. Deployment and use licenses for Licensed Instances are priced on a platform specific, per product, per virtual core basis.

1.6 "Licensed Software" means the Rogue Wave software components, in source code or binary form, together with the user guides, build guides, reference manuals and other documentation accompanying such software components 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.

1.7 "Maintenance and Support" means the technical support and software maintenance services on the Licensed Software for which Licensee has paid the applicable fees.

1.8 "Order Form" means a Perforce ordering document that (a) incorporates the terms of this Agreement and sets forth the Offering(s) ordered by Licensee and any associated fees, (b) has been agreed to by Licensee by manual or electronic signatures or through an electronic system specified by Perforce, and (c) is accepted by Perforce.

2. LICENSE GRANTS.

2.1 Development License Grant. Subject to the terms and conditions of this License Agreement, and upon payment of the applicable fees, Rogue Wave grants to Licensee a nonexclusive, nontransferable, perpetual, limited right and license to: (a) permit Licensed Developers to install and use the Licensed Software, on a per product or per module basis, in source and binary code form, for the sole purpose of creating and testing Applications; and (b) copy or have copied the Licensed Software as necessary for the purpose of exercising the rights granted under this Section 2.1 or for back-up or disaster recovery purposes, provided that Rogue Wave's copyright notice and other proprietary rights notices are reproduced on each copy.

2.2 Deployment and Use License Grant. Subject to the terms and conditions of this License Agreement, and upon payment of the applicable fees, Rogue Wave grants to Licensee a nonexclusive, nontransferable, limited right and license to: (a) install Applications created in compliance with Section 2.1 that contain the Licensed Software in binary executable form, on a per product or per module basis, on Licensed Computers and/or Licensed Instances, as applicable, that are located at facilities owned or leased by Licensee; (b) permit employees or other authorized persons to use such Applications deployed on such Licensed Computers and/or Licensed Instances for Licensee's internal business purposes, for the period and on` the physical or virtual CPU cores for which Licensee has paid the appropriate fees; and (c) copy or have copied the Licensed Software embedded in or used in the execution of Applications as necessary for the purpose of exercising the rights granted under this Section 2.2.

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 individual persons employed by or under contract to Licensee that Licensee has designated as "Licensed Developers" and for whom Licensee has paid the applicable development license fees. If one supported Licensed Developer ceases to be employed by or under contract to Licensee or permanently ceases work on projects involving the Licensed Software, then Licensee may designate an alternate person to replace such Licensed Developer at no additional cost. However, individual development licenses may not be used by different persons in shifts. Licensee may not create a programmatic interface that makes use of the Licensed Software application programming interfaces for use by any party other than Licensed Developers and must ensure that persons other than Licensed Developers do not have programmatic access to the Licensed Software either directly or indirectly. Licensee may not allow anyone other than a Licensed Developer 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 Deployment and Use Restrictions. The deployment and use rights granted to Licensee in Section 2.2 may only be exercised on specific physical computers owned by Licensee, located at facilities owned or leased by Licensee, that Licensee has designated as a "Licensed Computer" or "Licensed Instance", as applicable, and for which Licensee has paid the applicable per product or per module deployment and use license fees. The deployment and use license for a Licensed Computer is a one-time use license for a specific computer. It is not a concurrent license that may be used on numerous physical computers in shifts. The deployment and use license for a Licensed Instance is for a specific computing environment. However, Licensee may use Applications deployed on such Licensed Instance on any CPU cores contained within the Licensed Instance provided that its use at any one time does not exceed the total number of virtual CPU cores licensed for the Licensed Instance. Licensee may not install Applications on additional or alternate instances or on back-up or fail-over computers without paying the applicable fees for such instances or computers. While deployment and use license fees do not apply to client computers that merely access Applications that are deployed and run on server-based Licensed Computers, Licensee may not install or run Applications that contain the Licensed Software on client computers without paying the applicable deployment and use license fees for such computers.

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 or use of the Licensed Software or Applications by persons other than Licensee's employees or other authorized persons involved with the internal operation of Licensee's business or on computers not owned by Licensee or at facilities not owned or leased by Licensee.

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 by Rogue Wave. Licensee may not charge for the use of Applications on a SaaS basis. If Licensee uses, copies, or modifies the Licensed Software or transfers possession of any copy, adaptation, transcription,

or merged portion thereof to any other party in any way not expressly authorized by Rogue Wave, all licenses under this License Agreement are automatically terminated. Academic license rights may only be exercised by a teacher or student at an accredited institution that is organized and operated exclusively for the purpose of teaching its enrolled students (e.g., a university, college or high school), and for which such institution has been granted a discount to authorize such teacher or student to use the Licensed Software solely for student instruction and learning. Academic license rights may not be used for commercial purposes, including, without limitation, for publication of research findings, to comply with requirements of outside funding, or as a means to advertise the educational institution. Academic discounts are not available for satellite organizations such as research laboratories and hospitals.

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 number of developers using the Licensed Software and, with regard to the licensing of Licensed Computers, the number of computers on which Applications are deployed, as well as the platforms used by and the number of CPUs and cores contained on such computers, and, with regard to the licensing of Licensed Instances, the scope of usage of Applications on such instances in order to ensure that the appropriate license fees have been paid. If Licensee has received a deployment discount based on deployment type (e.g. workstation deployments, high-end or low-end embedded device deployments, or backup deployments), Licensee must also have a commercially-reasonable process in place to track and report on the deployment of Applications by such deployment type. Licensee must ensure that the total number of CPU cores being used on the Licensed Instance at any one time does not exceed the number of licensed virtual CPU cores. Licensee will, upon Rogue Wave's request, certify in writing the number developers using the Licensed Software and/or the number and deployment details of computers on which Applications are deployed, on a per product or per module basis. 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. Except as specifically provided in this License Agreement, all fees paid to Rogue Wave are nonrefundable.

3.7 Confidentiality. Licensee agrees to maintain in confidence the source code version of the Licensed Software by using at least the same physical and other security measures as Licensee uses for its own confidential technical information and documentation, but in no case less than reasonable measures. Licensee further agrees not to disclose the source code version of the Licensed Software, or any aspect thereof (including, without limitation, header files), to anyone other than employees or contractors who have a need to know or obtain access to such information in order to support Licensee's authorized use of the Licensed Software and are bound to protect such information against any other use or disclosure. Licensee agrees that all material and information relating to the Licensed Software is made available for use solely under and in accordance with the terms and conditions of this License Agreement. Licensee has no right at any time during or after cancellation or termination of this License Agreement to disclose such material and/or information relating to the Licensed Software, whether directly or indirectly, to any third party without Rogue Wave's prior written approval. Licensee shall hold harmless, defend and indemnify Rogue Wave from and against any and all losses, costs, damages and expenses arising out of or in connection with Licensee's failure to comply with requirements of this Section.

3.8 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.

3.9 Relationship with End Users. There are no third-party beneficiaries to this License Agreement. Consequently, Rogue Wave provides no warranty at all to any person, other than the limited warranty provided to Licensee hereunder. Licensee will be solely responsible for the development of the Applications authorized by this License Agreement and for providing all support or services required or requested by end users of the Applications. Licensee will not make any representations or

warranties to its employees, customers, end users or any other third party on Rogue Wave's behalf. Rogue Wave assumes no responsibility under this License Agreement, either directly or indirectly, for damages to Licensee or third parties resulting from the direct or indirect use of the Applications created by or on behalf of Licensee.

3.10 Remedies. Licensee acknowledges that, in the event of Licensee's breach of any of the foregoing provisions, Rogue Wave will not have an adequate remedy in money or damages. Rogue Wave will therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request without posting a bond. Rogue Wave's right to obtain injunctive relief shall not limit its right to seek further remedies.

4. <u>MAINTENANCE AND SUPPORT OF LICENSED SOFTWARE.</u> 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. 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. Unless otherwise specified in a quote generated by Rogue Wave, at the end of the initial maintenance and support term, Maintenance and Support will automatically renew for successive terms of one (1) year subject to Licensee's acceptance of Rogue Wave's or its authorized reseller's then-current fees, unless notice of non-renewal is given by either party no less than thirty (30) days before expiration of the term. Licensee will be deemed to have accepted Rogue Wave's or its authorized reseller's then-current fees for any successive term unless Licensee gives notice to Rogue Wave or its authorized reseller (as applicable) of its rejection of any increase in fees no later than thirty (30) days after Licensee receives notice thereof.

5. <u>LIMITED WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY.</u>

5.1 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"). The Licensed Software is provided to Licensee as source code and is for use by sophisticated software developers, and 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.

5.2 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.

5.3 DISCLAIMER. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 5.1 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.

5.4 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.

6. 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 the Licensed Software by anyone other than Rogue Wave or its duly authorized agent; (ii) the incorporation into the Licensed Software of any information provided by or requested by Licensee; (iii) a combination of the Licensed Software with any third party software or equipment not specified in the Documentation and where such combination is the cause of such infringement; or (iv) the use of a version of the Licensed Software other than the then-current version if the infringement would have been avoided by using of the then-current version. In the event the Licensed Software is held or is believed by Rogue Wave to infringe, Rogue Wave may, at its sole option and expense, elect to (a) modify the Licensed Software so that it is non-infringing; (b) replace the Licensed Software with non-infringing Licensed Software which is functionally equivalent; (c) obtain a license for Licensee to continue to use the Licensed Software as provided hereunder; or if none of (a), (b), or (c) is commercially reasonable, then (d) terminate the license for the infringing Licensed Software and refund the license fees paid for that Licensed Software, prorated over a five (5) year term from the Effective Date. THIS SECTION 6 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 6 are conditioned upon the Licensee (a) giving prompt notice of the claim to Rogue Wave; (b) granting sole control of the defense or settlement of the claim or action to Rogue Wave; and (c) providing reasonable cooperation to Rogue Wave and, at Rogue Wave's request and expense, assistance in the defense or settlement of the claim.

7. TERMINATION.

7.1 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 7.

7.2 Termination for Cause. Rogue Wave may terminate this License Agreement if Licensee breaches its obligations hereunder. Rogue Wave will effect such termination by giving Licensee notice of termination, specifying therein the alleged breach. If the breach is curable, Licensee will have a grace period of thirty (30) days after such notice is served to cure the breach described therein. If the breach is cured within the thirty (30) day grace period, then this License Agreement will remain in effect; otherwise, this License Agreement will automatically terminate upon the conclusion of the thirty (30) day grace period.

7.3 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, the Maintenance and Support obligations set forth in Section 4 and the indemnification obligations in Section 6 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.

8. MISCELLANEOUS.

8.1 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.

8.2 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..

8.3 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.

8.4 Waiver and Modifications. Failure by Rogue Wave to enforce any rights under this License Agreement will not be construed as a waiver of such rights, and a waiver in one or more instances will not be construed as constituting a continuing waiver or as a waiver in other instances. No modification of this License Agreement shall be binding unless it is in writing and is signed by an authorized representative of the party against whom enforcement of the modification is sought.

8.5 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.

8.6 Taxes. License fees and Maintenance and Support fees are exclusive of, and Licensee will pay all shipping charges and all taxes, duties and other charges or fees imposed by governmental authorities arising out of the License Agreement or the use of the Licensed Software by Licensee. In addition, if any Licensed Software will be delivered to points outside of the United States, all export duties, import duties, tariffs, value added taxes, licenses and other similar taxes, duties and fees will be paid by Licensee. If Licensee is required by the laws of any jurisdiction to deduct or withhold from any payment to Rogue Wave any income taxes which may be levied against Rogue Wave, then Licensee's payment shall be increased to an amount equal to the pre-tax payment due divided by a factor equal to one minus the applicable foreign tax rate. The tax shall then be applied to and deducted from the increased payment.

8.7 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.

8.8 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.

8.9 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. <u>EVALUATION LICENSE.</u> The terms of this Section 9 shall solely apply to Licensed Software licensed for purposes of Evaluation (the "Evaluation Software"). The terms of Sections 2, 5.1, 5.2, 5.3 and 7 shall not apply to the parties' rights and obligations with respect to Evaluation Software.

9.1 **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 9.1(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.

9.2   **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.