

## SOFTWARE LICENSE AGREEMENT - PV-WAVE® AND JWAVE™

This PV-Wave and JWave Software License Agreement (the “**Agreement**”) applies to the provision of the PV-Wave and/or J-Wave 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 this 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 software application(s) created by You or a Third Party (as defined below) using a Rogue Wave Development license (as defined below).
- 1.2 “**Computer**” means primarily a single computing device containing not more than 16 processing cores used by a single end user and that utilizes an operating system that runs the Software (as defined below). A “Computer” can be either a PC (defined as having up to but not more than eight (8) processing cores), or a workstation (defined as having at least eight (8) but not more than sixteen (16) processing cores).
- 1.3 “**Copy**” means a physical copy, as on a CD, or loading the Software or an Application into RAM or permanent memory of a Computer.
- 1.4 “**Deploy**” or “**Deployment**” means each time You make a Copy of an Application, when the Application calls upon the Software to execute pursuant to an Application Run-Time License (as defined below) for PV-WAVE or JWAVE, as applicable.
- 1.5 “**Development**” means a license for Internal use of the Software to create Applications, and/or a license for Internal use of the Software as a standalone analytics tool, as applicable.
- 1.6 “**Documentation**” means printed, electronic or online documentation purchased from Rogue Wave or provided by Rogue Wave to licensees of its corresponding proprietary PV-WAVE and JWAVE software libraries.
- 1.7 “**Floating**” Users mean Users that may concurrently use the Software via access to one or more Servers at the Site for development or in connection with Deployment pursuant to an Application Run-Time license, as the case may be.
- 1.8 “**Internal**” means use is limited to Licensee, its employees, and contractors performing work for Licensee's benefit, but not Licensee's customers or other third parties.
- 1.9 “**License Fee Agreement**” means the business transaction document(s) between You and Rogue Wave (such as, but not limited to Rogue Wave quotations, Your purchase orders and Rogue Wave's corresponding acknowledgements, and Rogue Wave invoices) which define the agreed parameters of use of the Software, including pricing and the types of licenses (Development and/or Run-Time licenses), and which identify the applicable Server(s) and/or Computer(s) and/or Platforms on which You may use the Software.
- 1.10 “**Maintenance and Support**” means the technical support and software maintenance services on the Software for which Licensee has paid the Maintenance and Support fees.
- 1.11 “**Node Lock**” means use is limited to a specifically identified Computer or Server at the Site.
- 12.1 “**Order Form**” means, collectively, a duly authorized quotation issued by Perforce to Licensee that specifies the Licensed Software and may include other terms and conditions governing such Licensed Software (such as the fees and the term of the license) and a purchase order, if applicable, issued by Licensee to Perforce in response to

and reflecting such quotation (with no additional or different terms, unless such additional or different terms are expressly accepted by Perforce in writing).

**1.12 “Pack”** means the number of authorized Development or Application Run-Time Node Lock licenses of the Software, as the case may be, allowing access via a Server to the Software for Development of one (1) or more Applications, or enabling display via a Server of the Software output pursuant Application Run-Time Node Lock licenses, respectively, when sold as a group of Development or Application Run-Time licenses. Packs only apply to use of the Software or Application(s) using a Run-Time version of the Software via a Server.

**1.13 “Platform”** means the operating system on which You are licensed to use the Software via access to one or more Servers at the Site for development or in connection with Deployment pursuant to an Application Run-Time license, as the case may be .

**1.14 “Run-Time(s)”** means the authority for one (1) or more Users to run an Application, developed pursuant to a Rogue Wave Software Development license, with a particular application version of the Software, whether PV-WAVE or JWAVE. Each Run-Time only applies to those versions of the Software that consist of an executable PV-WAVE or JWAVE procedure (i.e. previously compiled in .cpr file format). A Run-Time can only be run or executed in connection with an Application and cannot be used for creating or modifying Software code or for other Development purposes.

**1.15 “Seat(s)”** means the maximum authorized number of Node Lock or Floating Users of the Software.

**1.16 “Server”** means a multiple processor-computing device accessed and used by more than a single end user that has more than four (4) processors and that utilizes an operating system that runs the Software.

**1.17 “Site”** is the geographical location of the Server(s) and/or Computers (i) on which the Software is to be installed and used, as specified in Your License Fee Agreement with Rogue Wave, or, if not specified therein (ii) where the Software is delivered to You by Rogue Wave.

**1.18 “Software”** means Rogue Wave's proprietary PV-WAVE and JWAVE software, as specified in the applicable License Fee Agreement, and includes the corresponding Documentation and, if You have purchased support and maintenance, any Updates and New Releases (as those terms are defined in Exhibit A attached hereto and made a part hereof) subsequently provided by Rogue Wave to Licensee. Software does not include any third-party software products that may be embedded in or bundled with the Software, which products are separately licensed by the copyright holder.

**1.19 “Third Party”** means (i) if You are an individual, and are the only authorized User of the Software pursuant to this License Agreement, any other individual (including co-workers), and any legal entity (including Your employer), or (ii) if You are a legal entity, any individual not employed by You, and any other legal entity such as Your customers, suppliers and affiliated companies.

**1.20 “User”** refers (i) for Development licenses, to one or more individuals each of whom will Internally use a Copy of Software on only one (1) Computer, or multiple users who may access the Software via a Server for development of one (1) or more Application(s), and/or use the Software as a standalone analytics tool; and (ii) for Application Run-Time licenses, to each user of a Copy of one (1) or more Application(s), which Application(s) calls upon the Software to execute on a Computer, or via a Server.

## 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, You are granted a perpetual, non-transferable, non-exclusive, fee bearing Development license to install one (1) Copy of the Software in object code for Internal use by the number of Users and on the type of Computer(s) and/or Server(s) and/or Platform(s) specified in Your License Fee Agreement with Rogue Wave, for purpose(s) of allowing Users to create and test Applications, and/or for standalone use as an analytic tool, as the case may be. This Development license is limited to Internal use of the Software with the authorized operating system(s) (i) on the number of Computers with the number of individual Users specified in Your License Fee Agreement with Rogue Wave (and for which You have paid the applicable license fees), which License Fee Agreement may also specify Floating User and/or Node Lock limitations corresponding to the number and type of licensed Computers, (ii) on one or more Servers permitting access as specified in Your License Fee Agreement with Rogue Wave, which License Fee Agreement may also specify Floating User, Seat and/or Node

Lock limitations corresponding to the number and type of licensed Servers, and/or (iii) on a Computer or a Server as a standalone analytics tool, as the case may be. IF NOT OTHERWISE SPECIFIED IN THE APPLICABLE LICENSE FEE AGREEMENT BETWEEN YOU AND ROGUE WAVE, YOUR DEVELOPMENT LICENSE SHALL BE FOR A SINGLE USER ON A PC RUNNING THE WINDOWS (R) OPERATING SYSTEM. You may make a single backup Copy of the Software for archival purposes, but You shall not make any Copies of the Software for use on any Computer, or on any Server, located outside the Site (except to access one (1) copy of the Software on a Computer's memory for purposes authorized by this License Agreement while off-Site for transitory, temporary business purposes). You shall not (x) allow more than the authorized numbers of Users to use the Software or Documentation for development of Applications, (y) allow any Users to use the Software or Documentation for any purpose except for development of Applications, and (z) allow more than one (1) User to use the Software or Documentation on each Computer, unless specifically authorized otherwise by Rogue Wave. The Software may be used by You for development purposes to create Application(s) that use calls to compile and link to the Software.

## 2.2. Application Run-Time License Grant.

2.2.1. Subject to the terms and conditions of this License Agreement, and upon payment of the applicable fees for the Development license granted pursuant to Section 2 of this License Agreement (if You are a developer), and fees for the Application Run-Time licenses specified in Your License Fee Agreement with Rogue Wave, You are granted a perpetual, non-transferable, non-exclusive, fee-bearing Application Run-Time license to install, use and Copy the Software solely in connection with Your Deployment of one (1) or more Application(s), limited to the number of Run-Time(s), and on the type of Computer(s) and/or Server(s) and/or Platform(s) specified in Your License Fee Agreement with Rogue Wave, in object code, for Internal use only at the Site. Each Application Run-Time license is subject to any applicable limitations with respect to individual Users, numbers of Run-Times, Seats, Floating Users and/or Node Lock limitations specified in Your License Fee Agreement with Rogue Wave. IF NOT OTHERWISE SPECIFIED IN THE APPLICABLE LICENSE FEE AGREEMENT BETWEEN YOU AND Rogue Wave, YOUR APPLICATION RUN-TIME LICENSE SHALL PERMIT ONLY ONE (1) RUN-TIME OF THE SOFTWARE TO EXECUTE YOUR APPLICATION, BY A SINGLE USER ON A PC RUNNING THE WINDOWS (R) OPERATING SYSTEM. An Application Run-Time license only allows You to Internally use (not develop, create or modify) PV-WAVE or JWAVE, as the case may be, to Deploy one (1) or more Applications developed by You or a Third Party using a Rogue Wave Development license for the Software. A Third Party may only use Your Application(s) with the Software if such Third Party also purchases one (1) or more Application Run-Time Licenses from Rogue Wave.

2.2.2. To the extent not prohibited by applicable state law, You agree to indemnify, hold harmless and defend Rogue Wave from and against any claims or lawsuits, including but not limited to attorney's fees, that are based on the use, deployment or distribution of Your Application(s). You agree to use reasonable efforts to restrict Users of Your Application from copying, sublicensing, modifying, reverse engineering, disassembling, decompiling, or redistributing the Software, or using Your Application as an application development tool. You may not distribute the Software: (i) externally; (ii) to third parties, other than Your contractors who may use the Software for Your Internal benefit only; (iii) for use in conjunction with a compiler, an interpreter language product, or an interface which forms a part of a programming language product; (iv) that consists of a development tool or utility program similar to the Software which contains the Software; (v) that includes, directly or indirectly, the Software Documentation; (vi) that contains the programming interface derived from the Software. Your Application(s) (y) may not provide Your User(s) with an Application Programming Interface (API) which facilitates programmatic access to the developer version of any dynamically linked library (e.g., identified in PC products as a ".lib" file) contained in the Software (e.g., in PC products, in any form other than as bound executables), and (z) may not be used to develop other software programs or applications.

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**4. LIMITED WARRANTY AND LIMITATION OF LIABILITY.** Rogue Wave warrants that the Software will perform substantially in accordance with the Documentation for a period of thirty (30) days from the date of receipt. ROGUE WAVE'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY SHALL BE, AT ROGUE WAVE'S OPTION, EITHER (1) RETURN OF THE PRICE PAID, OR (2) REPAIR OR REPLACEMENT OF THE SOFTWARE. THIS LIMITED WARRANTY IS VOID IF FAILURE OF THE SOFTWARE HAS RESULTED FROM ACCIDENT, ABUSE, IMPROPER INSTALLATION OR MISUSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ROGUE WAVE AND ITS RESELLERS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. ROGUE WAVE WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOST SAVINGS), EVEN IF ROGUE WAVE OR ITS RESELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. REGARDLESS OF THE BASIS ON WHICH YOUR CLAIM FOR DAMAGES AGAINST ROGUE WAVE, ROGUE WAVE'S ENTIRE LIABILITY TO YOU IS LIMITED TO NO MORE THAN THE AMOUNT YOU PAID FOR THE SOFTWARE. ROGUE WAVE WILL NOT BE LIABLE TO YOU FOR ANY OTHER PARTY'S CLAIMS OR DAMAGE TO OR LOSS OF YOUR RECORDS OR DATA.

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**6. TERM AND TERMINATION.** This Agreement shall take effect as of the date of Your acceptance of this License Agreement and shall continue in effect thereafter until terminated by either party. If You fail to comply with any material term or condition herein, Rogue Wave may, at its option, without prejudice to any other rights, terminate this License Agreement and/or any license(s) granted herein (including all perpetual Development and Application Run-Time licenses) if such default remains uncorrected thirty (30) days after notice is sent to Licensee. Following termination, You must return or destroy, as requested by Rogue Wave, all copies of the Software and Documentation in Your possession (whether modified or unmodified). You agree to certify Your compliance with such requirement upon Rogue Wave's request. Sections 1, 5, 7, 9, 10, and 11, and this survival clause, shall survive termination of this License Agreement. Unless terminated by Rogue Wave for Licensee's material breach in accordance with this Section 8, the Development and Application Run-Time licenses granted pursuant to Section 2 of this License Agreement shall survive any termination of this License Agreement.

**7. CONFIDENTIALITY.** You agree to maintain in confidence the confidential information of Rogue Wave, including any source code to any Rogue Wave software programs to which You have access. You further agree not to disclose such Rogue Wave confidential information to anyone other than Your employees or contractors who have a need to know or obtain access to such information in order to support Your authorized use of the Software who are bound, by a written agreement, to protect such information against any other use or disclosure.

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**9. VERIFICATION.** You must have a commercially-reasonable process in place to track the usage of the Software in order to ensure that the appropriate license fees have been paid under this License Agreement. You will, upon Rogue Wave's request, certify in writing Your usage of the Software. In the event You fail to provide such certification within thirty (30) days of Rogue Wave's request, or, if Rogue Wave reasonably believes that a

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**10. SUPPORT AND MAINTENANCE.** Rogue Wave or its authorized resellers shall provide Maintenance and Support on the 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 development and deployment environment is on the current product support matrix. Off-matrix support is available from Rogue Wave for an additional fee. 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 fees, unless notice of non-renewal is given by either party no less than thirty (30) days before expiration of the term. For each renewal, Rogue Wave reserves the right to increase the Maintenance and Support fees, which were charged in the prior, expiring term without taking into account any transaction incentives included in a prior term. Licensee will be deemed to have accepted Rogue Wave's or its authorized reseller's 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 or invoice.

## **11. MISCELLANEOUS.**

**11.1. 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.

**11.2. Force Majeure.** Neither party will be deemed to be in breach of this License Agreement, nor otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this License 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.

**11.3. Governing Law/Forum Selection.** This License Agreement and any claim, cause of action or dispute arising out of, or related thereto, shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of Licensee's country of origin or where Licensee uses the licenses from, without giving effect to any conflict of law principles, which would result in the application of the laws of a jurisdiction other than the State of Delaware. Any dispute, claim, or controversy arising out of, connected with, or relating to this License Agreement, the 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.

**11.4. No Joint Venture.** Nothing contained in the License Agreement will be construed so as to make the parties partners or joint venturers or to permit either party to bind the other party to any agreement or purport to act on behalf of the other party in any respect.

**11.5. Waiver and Modifications.** Failure by either party to enforce any rights under this License Agreement will not be construed as a waiver of such rights, and a waiver by either party of a default hereunder in one or more instances will not be construed as constituting a continuing waiver or as a waiver in other instances. No



modification of this License Agreement shall be binding unless it is in writing and is signed by an authorized representative of the party against whom enforcement of the modification is sought.

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**11.7. Taxes.** License fees and Maintenance and Support fees are exclusive of, and Licensee will pay, all shipping charges and all taxes, duties and other charges or fees imposed by governmental authorities arising out of the License Agreement or the use of the Software by Licensee and its Users(s). In addition, if any 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.

**11.8. 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.

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