PLEASE READ THE FOLLOWING LICENSE AGREEMENT BEFORE INSTALLING AND USING THE ROGUE WAVE SOFTWARE PROGRAM (THE “SOFTWARE”) ASSOCIATED WITH THIS AGREEMENT.

CLICKING ON THE “ACCEPT” OR “YES” BUTTON IN RESPONSE TO THE ELECTRONIC LICENSE AGREEMENT ENQUIRY AS TO ACCEPTANCE OF THE TERMS OF THIS LICENSE AGREEMENT, INSTALLING OR DOWNLOADING THE SOFTWARE, INDICATES ACCEPTANCE OF AND AGREEMENT TO, AND LEGALLY BINDS YOU, YOUR EMPLOYER (COLLECTIVELY THE “CUSTOMER”) AND ROGUE WAVE SOFTWARE INC., ON ITS OWN BEHALF AND ON BEHALF OF ITS SUBSIDIARIES (COLLECTIVELY “ROGUE WAVE”) TO THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT (INCLUDING ANY TERMS, CONDITIONS AND RESTRICTIONS CONTAINED IN ANY ORDER RELATING TO THE SOFTWARE). IF THE CUSTOMER DOES NOT ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT THEN EITHER DO NOT DOWNLOAD, INSTALL OR OTHERWISE USE THE SOFTWARE.

THE RIGHT TO USE THE SOFTWARE IS CONDITIONAL UPON ACCEPTANCE OF THIS AGREEMENT, UNLESS THE CUSTOMER HAS ENTERED INTO A WRITTEN AND DULY SIGNED LICENSE AGREEMENT WITH ROGUE WAVE, IN WHICH CASE SUCH SIGNED LICENSE AGREEMENT WILL GOVERN THE CUSTOMER’S USE OF THE SOFTWARE.

THIS LICENSE AGREEMENT SHALL APPLY EVEN WHERE ROGUE WAVE PERFORMS ITS CONTRACTUAL OBLIGATIONS WITHOUT RESERVATION DESPITE BEING AWARE THAT THE CUSTOMER HAS SUBMITTED TERMS AND CONDITIONS THAT ARE INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS CONTAINED IN THIS LICENSE AGREEMENT.

1. Definitions

In this Agreement the following terms shall have the following meanings respectively:

“Agreement” means the Order together with the terms and conditions contained herein.

“Bankruptcy Event” means the occurrence of any one or more of the following events in respect of party hereto: (a) a receiver, liquidator or agent or similar officer is appointed for its business, property, affairs or revenues and such proceedings continue for 60 days; (b) it admits in writing its inability to pay its debts generally as they come due, becomes insolvent, is adjudicated bankrupt, or enters or commences composition, restructuring, rearrangement, liquidation, winding up or similar proceedings, makes an assignment for the benefit of its creditors or another arrangement of similar import; (c) proceedings under bankruptcy, composition, restructuring, rearrangement, liquidation (if commenced against it) or similar insolvency laws are commenced and are not dismissed within 60 days; or (d) it ceases to carry on business in the ordinary course.

“Build License” means a license to use the Software on a single Designated Server, for internal use on such Designated Server.

“Confidential Information” has the meaning ascribed thereto in Section 4.1 hereof.

“Designated Server” means a computer storage device that contains information, software, documentation and/or data which are accessible to other computers through a network or other connection and which is identified by a host ID or other serial number.

“Documentation” means the explanatory user materials supplied by Rogue Wave with the Software in electronic form.

“Order” means an order for Software made pursuant to a valid Order Form.
“Order Form” means a Customer purchase order or other order form issued by the Customer for the purchase of User Licenses.

“Renewal Term” has the meaning ascribed thereto in Section 3.2 hereof.

“Software” means the Rogue Wave software specified in an Order Form, in object code, and any updates, changes, enhancements or modifications thereto that may be provided by Rogue Wave to Customer pursuant to this Agreement, including Maintenance Releases, Major Releases and Patches (as such terms are defined in the Rogue Wave’s Support and Maintenance Terms).

“Source Code” means those statements in a computer language which, when processed by a compiler, assembler or interpreter, become executable by a computer and includes, without limitation, all comments, notes, flow charts, decision tables, argument lists and other human readable references relating to the operation, purpose, compilation, assembly or interpretation thereof.

“Subscription Fees” has the meaning ascribed thereto in Section 6.1 hereof.

“Subscription Term” means the term of a User License as specified in the Order Form and shall include any Renewal Term.

“User” means any employee or contractor of the Customer who (a) requires access to the Software for development purposes, or (b) has access to the detailed reports and results of the analysis performed by the Software, including line number or trace-back information.

“User License” means a license to use the Software by a User.

Other capitalized terms are defined elsewhere in this Agreement.

2. Grant of License

2.1 User License. Subject to the terms of this Agreement and payment of the applicable Subscription Fees by Customer, Rogue Wave hereby grants to Customer a non-exclusive, non-sublicensable, non-perpetual, non-transferable (except in accordance with Section 13 hereof) right and license, solely during the Subscription Term, to install and use the Software, together with the Documentation relating thereto, by any User for internal use in accordance with the terms, conditions and restrictions contained herein; provided that the number of Users may not exceed the number of User Licenses purchased by the Customer for the Software. Rogue Wave shall provide to the Customer a mutually agreed upon number of Build Licenses in order to permit the Customer to use the User Licenses ordered by the Customer.

2.2 Documentation License. Customer and Users may, during the Subscription Term, use the Documentation provided by Rogue Wave to assist with the operation and use of the Software solely to support Customer’s licensed use of the Software as permitted hereunder.

2.3 Archive License. Customer may make a reasonable number of backup copies of the Software, provided that such backup copies are not installed or used for other than archival purposes.

2.4 Reservation of Rights. Except as expressly provided in this Agreement, Customer is granted no title, ownership or intellectual property rights in or to the Software or Documentation, in whole or part. All such rights shall remain in Rogue Wave and/or in licensors to Rogue Wave of programs provided within the Software. All copies of the Software (but not the media on which the copies are encoded) shall be and remain the property of Rogue Wave and its licensors.
3. **Term and Termination**

3.1 **Subscription Term.** This License shall be effective upon the delivery of the Software to the Customer and shall, unless terminated earlier in accordance with the terms hereof, continue until the end of the Subscription Term, or if renewed pursuant to Section 3.2 hereof, the then-current Renewal Term.

3.2 **Renewal Term.** Upon the expiration of the initial Subscription Term, a License may be renewed by the Customer for successive one year terms (each a “Renewal Term”) by the Customer delivering to Rogue Wave, not less than 30 days prior to the end of the initial Subscription Term or the then-current Renewal Term, an Order for the renewal of the License. Payment for any Renewal Term is due prior to the expiration of the previous Subscription Term or Renewal Term.

3.3 **License Suspension.** Rogue Wave may immediately suspend Customer’s License(s) if Customer fails to make any payment due under the Agreement and does not cure such non-payment within ten (10) business days after Rogue Wave has provided Customer with notice of such failure. Any suspension of a License by Rogue Wave under the preceding sentence shall not excuse Customer from its obligation to make all payment(s) under the Agreement.

3.4 **License Termination.** Rogue Wave may terminate this Agreement if (i) it has provided written notice to the Customer of the claimed breach and the Customer fails to correct such breach to the reasonable satisfaction of Rogue Wave within 30 days of receiving such notice, or (ii) immediately upon the occurrence of a Bankruptcy Event in respect of the Customer. If the Customer fails to pay the amounts invoiced by Rogue Wave in respect of the Software and Documentation in accordance with the terms of Rogue Wave’s invoice, the Customer shall be deemed to have materially breached this Agreement. If Rogue Wave terminates the Agreement for Customer’s non-payment, Customer must pay within 30 days all amounts which have accrued prior to such termination, as well as all amounts payable by Customer on account of the remainder of the then-current Subscription Term (even if earlier terminated) under the Agreement.

3.5 **Obligations Upon Termination.** Upon the termination of this Agreement, the Customer shall forthwith (i) discontinue the use of the Software, (ii) return to Rogue Wave or destroy all copies of the Software and Documentation, (iii) remove from all computers all copies of the Software, and (iv) certify to Rogue Wave that it has complied with the requirements of this paragraph 3.5.

4. **Other Restrictions and Obligations**

4.1 **Confidential Information.** The Software, including without limitation, the specific design, structure and logic of individual programs, their interactions both internal and external, and the programming techniques employed therein, are considered confidential and trade secrets of Rogue Wave and its licensors (the “Confidential Information”), the unauthorized disclosure of which would cause irreparable harm to Rogue Wave and its licensors. Customer shall use the same degree of care and means that it uses to protect its own information of a similar nature, and in any event, shall use reasonable efforts to prevent the disclosure of Confidential Information to any third parties. Customer shall not use, reproduce or distribute the Confidential Information other than for the purposes authorized by this Agreement. This confidentiality obligation shall continue to apply to the Confidential Information following the termination hereof, provided that the confidentiality provisions contained herein shall not apply to Confidential Information which (i) was known by Customer prior to disclosure, as evidenced by its business records; (ii) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of the confidentiality provisions contained herein; (iii) was disclosed to Customer by a third party, provided such third party or any other party from whom such third party receives such information is not in breach of any confidentiality obligation in respect of such information; (iv) is independently developed by the Customer without reference to the Confidential Information or breach of the confidentiality obligations contained herein; or (v) is disclosed when such disclosure is compelled pursuant to legal, judicial, or administrative proceeding, or otherwise required by law, provided that
Customer shall give all reasonable prior notice to Rogue Wave to allow it to seek protective or other court orders.

4.2 License Restrictions. Customer shall not: (i) use the Software and Documentation for any purpose other than for the sole purpose of analyzing Customer owned or licensed Source Code by the User in connection with the development of Customer’s software products (or as otherwise specifically permitted by this Agreement); (ii) except as expressly authorized herein, make any copies of the Software; (iii) reverse engineer, disassemble, reverse translate, decompile, or in any other manner decode the object code for the Software in order to derive the Source Code form, or decode any passwords or encrypted license or installation keys that have been provided to Customer by Rogue Wave in order to enable the execution of the Software on unauthorized equipment, or for any other reason do or attempt to do any of the foregoing; (iv) except as expressly provided herein, or unless expressly authorized by Rogue Wave in writing, sublicense, distribute, transfer, loan, use, lease or otherwise make available the Software and Documentation or any part thereof to any third party; (v) use the Software to operate a service bureau for, or to provide any software analysis or reports (including but not limited to the results of the analysis performed by the Software) or security consulting or professional services (including but not limited to independent verification and validation services) to, any third parties, provided that the Customer may attribute a modification made by one or more Users to Publicly Available Software (as hereinafter defined) to the results of the analysis of such Publicly Available Software by the Software; (vi) remove any copyright notices, trade-marks, or any other proprietary legends and/or logos of Rogue Wave or its licensors appearing on the Software or the Documentation; or (vii) use programmatic techniques, utilities or UNIX commands to provide access to the Software by unauthorized users other than as permitted by the license grant provisions of Section 2 hereof.

4.3 Publicly Available Software. Portions of the Software include software programs that are distributed by Rogue Wave pursuant to the terms and conditions of a license granted by the copyright owner of such software programs and which governs Customer’s use of such software programs (“Publicly Available Software”). All Publicly Available Software used in the Software can be found at http://www.klocwork.com/products/documentation/current/FOSS. The Customer’s use of Publicly Available Software in conjunction with the Software in a manner consistent with the terms of this Agreement is permitted, however, the Customer may have broader rights under the applicable license for Publicly Available Software and nothing contained herein is intended to impose restrictions or limitations on the Customer’s use of the Publicly Available Software. The warranty, indemnity and limitation of liability provisions in this Agreement will apply to all of the Software, including Publicly Available Software included in the Software. Copies of such Publicly Available Software license agreements are available by contacting Rogue Wave at support@roguewave.com. The source code for certain portions of the Publicly Available Software included in the Software (as specified in the copyright notices) is available by contacting Rogue Wave at support@roguewave.com.

4.4 Feedback. Customer may provide reasonable feedback to Rogue Wave including, but not limited to, suitability, problem reports, suggestions and other information with respect to the Software (“Feedback”). All Feedback shall be the property of Rogue Wave and may be used by Rogue Wave for any purpose it sees fit without compensation and Customer hereby grants to Rogue Wave, without any charge or cost whatsoever, the right to use, copy, modify and create derivative works of Feedback.

5. Audits

Rogue Wave shall have the right, with reasonable notice and during normal business hours, at Rogue Wave’s sole expense and in as non-disrupting a manner as reasonably possible, to verify Customer’s compliance with Customer’s obligations hereunder through an on-site audit of Customer’s records, facilities and licensing processes by Rogue Wave or a third party representative of Rogue Wave. Customer shall permit up to one such audit per year, including once during the 12-month period following the termination of this Agreement for any reason. Rogue Wave may use such audit reports solely to enforce its rights hereunder and shall otherwise treat audit reports and any information received in connection with such audits as Confidential Information. In the event that an audit establishes that Customer is in material breach of its obligations hereunder, Customer shall
reimburse Rogue Wave for the cost of the audit and shall promptly pay to Rogue Wave all outstanding Subscription Fees.

6. **Fees and Payment Terms**

6.1 **Fees.** The fees (the “Subscription Fees”) for the Software payable by Customer to Rogue Wave and the Subscription Terms applicable to each Software product are as set out in the then current Rogue Wave price list or as mutually agreed in writing by Rogue Wave and Customer in an Order Form.

6.2 **Taxes.** All Subscription Fees are exclusive of all sales taxes, value-added taxes, Canadian goods and services taxes, and similar taxes, including withholding taxes, customs duties or similar charges. Such taxes and charges shall be incremental to the Subscription Fees and shall be payable by Customer in accordance with applicable law.

6.3 **Payment Terms.** Payment terms shall be net 30 days from the date of Rogue Wave’s invoice. Customer shall pay Rogue Wave the Subscription Fees as required herein. For invoiced amounts that are past due and have not been paid by Customer, Customer shall pay interest for late payment equal to one percent (1%) per month on the outstanding balance of past due amounts.

6.4 **Purchase Orders.** Unless otherwise agreed to in writing by Customer and Rogue Wave, the acceptance of any Order placed by Customer for the Software or Documentation is expressly made conditional upon Customer’s acceptance of and agreement to the terms and conditions contained herein and Rogue Wave agrees to furnish the Software and Documentation only upon these terms and conditions and not on the terms and conditions contained in Customer’s purchase order. The terms and conditions on the reverse side of a Customer purchase order and on any Rogue Wave order acknowledgment form (if any) are of no force and effect.

6.5 **Acceptance of Software.** The Software shall be deemed to be accepted upon delivery of the Software and Documentation to Customer.

7. **Support and Maintenance**

Support and maintenance is provided by Rogue Wave during the Subscription Term in accordance with its then-current standard Support and Maintenance Terms. Rogue Wave’s Support and Maintenance Terms are subject to change from time to time in Rogue Wave’s sole discretion.

8. **Limited Warranty**

8.1 **Limited Warranty.** Rogue Wave warrants that the Software will perform substantially in accordance with the Documentation and other specifications published by Rogue Wave for a period of 60 days from the date of the receipt of the Software by Customer. Rogue Wave does not warrant, however, that Customer’s use of the Software will be uninterrupted, that the operation of the Software will be error-free, that the Software will meet Customer’s requirements or that all errors will be corrected. Customer assumes the entire risk as to the results and output of the Software. If during the warranty period, as defined above, the Software fails to perform in accordance with the warranty, Rogue Wave shall use reasonable commercial efforts to correct the failure of the Software to perform in accordance with the warranty. If Rogue Wave is unable to correct the failure within a reasonable time, Rogue Wave shall refund the purchase price of the Software. Rogue Wave also warrants that the media on which the Software is encoded will be free from defects in materials and workmanship under normal use and service for a period of one year from date of receipt. Rogue Wave shall, at its option, repair or replace any defective media of which it is given notice during the one-year period.

8.2 **Termination of Warranty.** If any modifications are made to the Software by Customer during the warranty period without Rogue Wave’s authorization then the above warranty shall immediately be terminated. This warranty shall not apply if the Software is used on or in conjunction with hardware or programs other than
the unmodified version of the hardware and programs with which the Software is designed to be used as described in the Documentation.

8.3 **Exclusive Remedies.** THE LIMITED WARRANTY SET OUT IN SECTION 8.1 HEREOF IS THE ONLY WARRANTY PROVIDED BY ROGUE WAVE AND THE REMEDIES SET OUT IN SECTION 8.1 HEREOF ARE THE SOLE AND EXCLUSIVE REMEDIES OF CUSTOMER FOR A BREACH OF WARRANTY.

8.4 **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET OUT IN SECTION 8.1 ABOVE, THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESSED OR IMPLIED AND ROGUE WAVE (ON ITS OWN BEHALF AND ON BEHALF OF ITS SUPPLIERS AND LICENSORS) HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM USAGE OR OTHERWISE, INCLUDING WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. TO THE EXTENT THAT ROGUE WAVE IS NOT PERMITTED BY APPLICABLE LAW TO DISCLAIM ANY WARRANTY CONTAINED HEREIN, THE SCOPE AND DURATION OF SUCH WARRANTY SHALL BE THE MINIMUM REQUIRED UNDER SUCH LAW.

8.5 **Warranty of Third Party Software.** ALL THIRD PARTY SOFTWARE INCLUDED IN THE ROGUE WAVE SOFTWARE IS WARRANTED BY ROGUE WAVE UNDER SECTION 8.1 HEREOF. CUSTOMER SHALL NOT PURSUE ANY CLAIMS RELATED TO THIRD PARTY SOFTWARE WITH THE APPLICABLE MANUFACTURER OR SUPPLIER THEREOF AND SUCH MANUFACTURERS OR SUPPLIERS SHALL NOT HAVE ANY LIABILITY WHATSOEVER TO THE CUSTOMER FOR DAMAGES, INCLUDING DIRECT, INDIRECT, SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES.

8.6 **High Risk Activities.** The Software is not specifically designed, manufactured or intended for use in the planning, construction, maintenance, control or direct operation of nuclear facilities, aircraft navigation, control or communication systems, weapons systems or direct life support systems.

8.7 **Customer Back-Ups.** Customer is responsible for backing up any and all data or reports produced by the Software, and for providing an operating environment for the Software as specified in the Documentation.

9. **Infringement Indemnification**

9.1 **Rogue Wave Indemnity.** Rogue Wave will defend or settle at its own expense any action brought against Customer to the extent that it is based on a claim that any Software supplied by Rogue Wave hereunder infringes any third party intellectual property right (an “Infringement Claim”), and indemnify Customer (including its employees, contractors, officers and directors) against fines, penalties, costs, damages and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction, or agreed to in a written settlement agreement by Rogue Wave, arising out of such Infringement Claim. Rogue Wave’s obligation to indemnify Customer pursuant to this Section 9.1 is subject to the following conditions: (a) Customer must give Rogue Wave prompt written notice of any Infringement Claim, (b) Customer must provide, at Rogue Wave’s expense, reasonable information and assistance in connection with the defense and settlement of such Infringement Claim, and (c) Customer agrees in writing with Rogue Wave that Rogue Wave has sole control of the settlement or defense of such Infringement Claim.

9.2 **Exclusions.** Rogue Wave shall not be responsible for indemnifying Customer to the extent the Infringement Claim results from (i) compliance with Customer’s designs, specifications, or written instructions as requested and provided by Customer to Rogue Wave hereunder; (ii) modification by Customer of Software if such infringement would have been avoided but for such modification; (iii) the combination of Software with equipment or software not authorized or provided by Rogue Wave or otherwise approved by Rogue Wave in the Documentation or Specifications, other than Software designed by Rogue Wave to work with certain commercial hardware or other commercially available software if such infringement would have been avoided but for such combination; (iv) the failure by Customer to use an updated or current version of the Software provided by Rogue Wave following notice by Rogue Wave that the previous version of the Software infringes any third party intellectual property right; or (v) Software licensed for no fee, including trial, evaluation and beta Software.
9.3 **Other Remedies.** Without derogating from the provisions of subsection 9.1 above, and in addition thereto, when notified of an action or motion that seeks to restrict the exercise of any of the rights granted herein, Rogue Wave may, (and in the case of a judgment, order or injunction that restricts the exercise of any of the rights granted herein, shall), in good faith, at its option and expense, (a) obtain the right for Customer to exercise their rights in accordance with this Agreement, (b) substitute other non-infringing software with equivalent functional capabilities, or (c) modify the Software while retaining equivalent functional capabilities, so that it no longer infringes, or (d) if none of the foregoing are commercially feasible, as determined by Rogue Wave in its sole discretion, terminate the User License(s) for such Software and refund to Customer that portion of any prepaid Subscription Fees that is applicable to the period following the termination of the User License pursuant to this Section 9.3.

9.4 **Limitation.** Notwithstanding any other provision of this Agreement, the liability of Rogue Wave to Customer under this Section 9 shall not exceed $500,000. Rogue Wave agrees to obtain Customer’s consent for any settlement in excess of $500,000. In no event shall Rogue Wave be responsible for any cost, expense or compromise incurred or made by Customer without Rogue Wave’s prior written consent.

9.5 **Sole Remedies.** SECTION 9 HEREOF CONTAINS ROGUE WAVE’S ENTIRE LIABILITY, AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES, FOR INFRINGEMENT CLAIMS.

10. **Limitation of Liability**

10.1 **Exclusion of Indirect Damages.** EXCEPT FOR DAMAGES CAUSED BY FRAUD OR A BREACH OF A PARTY’S CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY (IN THE CASE OF ROGUE WAVE, INCLUDING ITS SUPPLIERS AND LICENSORS) IS OR WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES, INCLUDING PUNITIVE OR MULTIPLE DAMAGES, OR ANY FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF DATA, EQUIPMENT DOWNTIME, LOSS OF USE, LOSS OF GOODWILL OR LOSS OF REVENUE OR PROFIT SUFFERED BY THE OTHER FOR ANY REASON, WHETHER FORESEEABLE OR NOT, NOR SHALL ROGUE WAVE BE LIABLE TO THE CUSTOMER FOR ANY CLAIM AGAINST CUSTOMER BY ANY THIRD PARTY FOR DAMAGES OF ANY KIND WHICH ARISE FROM OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SOFTWARE OR THE DOCUMENTATION.

10.2 **Limitation on Direct Damages.** EXCEPT FOR DAMAGES CAUSED BY FRAUD, A BREACH OF A PARTY’S CONFIDENTIALITY OBLIGATIONS, OR INDEMNITY CLAIMS UNDER SECTION 9 HEREOF (WHICH ARE SUBJECT TO THE LIMITATION OF LIABILITY SET OUT IN SECTION 9.4 HEREOF), IN NO EVENT SHALL EITHER PARTY’S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT OR RELATING TO THE SUBJECT MATTER HEREOF FOR ALL CLAIMS, COSTS, LOSSES AND DAMAGES EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO ROGUE WAVE PURSUANT TO THIS AGREEMENT FOR THE SOFTWARE.

10.3 **Application of Exclusions and Limitations.** The foregoing limitations and exclusions of liability shall apply even if a party had been advised of the possibility of any such costs, losses or damages or knew or ought to have known of such costs, losses or damages and shall apply regardless of whether the action arose in contract, including, without limitation, from a fundamental breach, or breach of a condition, fundamental term or warranty, or in tort (including, without limitation negligence) or otherwise. The foregoing provisions limiting the liability of Rogue Wave shall also apply to its officers, directors, employees, and agents as trust provisions for the benefit of such officers, directors, employees, and agents and shall be enforceable by such persons as trust beneficiaries.

10.4 **Customer Data.** Customer acknowledges that the results of the Software depend on the data provided by Customer for use with the Software. Customer shall bear full responsibility for the accuracy of the data used with the Software. Customer acknowledges that the Software is a tool to assist personnel in the analysis of software code and is not a substitute for personnel with expertise in such analysis.
11. **Export Restrictions**

The Software and Documentation are subject to export and import restrictions. By downloading, installing, or using the Software, Customer is representing and warranting that Customer and its Users are not located in, under the control of, and are not a national or resident of, any country to which the export of the Software and Documentation would be prohibited by the laws and/or regulations of Canada and/or the United States. Customer also hereby represents and warrants that Customer and its Users are not an entity or individual to whom the export of the Software and Documentation would be prohibited by the laws and/or regulations of Canada and/or the United States. Customer shall comply with the export laws and regulations of Canada and the United States that are applicable to the Software and Documentation and Customer shall comply with any local laws and/or regulations in Customer’s jurisdiction that may impact Customer’s right to export, import, or use the Software or related information, and Customer represents and warrants that it has complied with any such applicable laws and/or regulations. The Software shall not be used for any purposes prohibited by export laws and/or regulations, including, without limitation, nuclear, chemical, or biological weapons proliferation. Customer shall be responsible for procuring all required permissions for any subsequent export, import, or use of the Software or Documentation.

12. **Restricted Rights**

The Software and Documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure of the Software or Documentation by or on behalf of the United States of America, its agencies and/or instrumentalities is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Contractor/manufacturer is Rogue Wave Inc., 15 New England Executive Park, Burlington, MA 01803.

13. **Assignment**

This Agreement and the rights and obligations hereunder are not transferable or assignable without the prior written consent of the other party hereto, except that (a) rights to payment may be transferred or assigned; and (b) a person or entity who acquires all or substantially all of the assets or business of a party, whether by sale, merger or otherwise shall have the right to assume all the rights and obligations of a party hereunder.

14. **General**

14.1 **Waivers.** No waiver by either of the parties hereto of any rights arising from the breach of this Agreement shall be construed as a continuing waiver, nor shall failure to assert a breach be deemed to waive that breach or any further breach. No waiver of any of the provisions or a breach of this Agreement shall constitute a waiver of any other provision or other breach of this Agreement. No waiver shall be binding unless executed in writing.

14.2 **Entire Agreement.** This Agreement contains the whole of the agreement between the parties hereto concerning the matters provided for herein and there are no collateral or precedent representations, warranties, agreements or conditions not specifically set forth in this Agreement and none have been relied on by either party as an inducement to enter into this Agreement.

14.3 **Amendments.** No modification, amendment or variation of this Agreement shall be of effect or binding upon the parties hereto unless agreed to in writing by them.

14.4 **Governing Law.** This Agreement shall be governed by the laws of the State of Colorado. The venue for any disputes arising under or in respect to this Agreement shall be Denver, CO. All proceedings shall be conducted in English. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or the transactions contemplated hereunder.
14.5 **Language of Agreement.** This Agreement has been prepared and drawn up in the English language. In the event that this Agreement is translated into any other language and in the event of a discrepancy in the interpretation between the English text and the text of the other language, the English text shall govern.

14.6 **Binding Effect.** This Agreement shall enure to the benefit of and be binding upon Customer and Rogue Wave and their respective successors and permitted assigns.

(Rev. March 2017)