

Rogue Wave Open Source Customer Agreement

This Customer Agreement (this “**Agreement**”) contains the terms and conditions of any support services that you purchase for any open source package and is a legal agreement between Rogue Wave Software, Inc. (“**Rogue Wave**,” “**we**,” “**us**,” or “**our**”) and you or the entity you represent (“**you**” or “**Customer**”). This Agreement takes effect when you click an “I Accept” button or check box presented with these terms or purchase support for any open source package (the “**Effective Date**”). You represent to us that you are lawfully able to enter into contracts (e.g., you are not a minor). If you are entering into this Agreement for an entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

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

1. Support Services. Rogue Wave will provide technical support as provided in this Agreement (the “**Services**”) for the specific open source software package(s) (“**Supported Package(s)**”) identified on a Rogue Wave quote (the “**Quote**”) that references this Agreement. The Services will be provided for the period and quantities identified on the Quote. Technical support consists of assistance with problem resolution, defects, and "how to" questions as well as advice and recommendations on installation and configuration. Technical support incidents can be submitted via email or by phone. Each single unique defect or question about a Supported Package will be counted as an incident. Unless otherwise indicated at the time of purchase, you may submit an unlimited number of technical support incidents for Supported Packages. You acknowledge that Rogue Wave is under no obligation to provide support for any portion of the Supported Packages for which you have not purchased support. Details about the technical support process, response times, types of issues, and severity of issues can be found here: <http://www.roguewave.com/company/tc/> - Open Source Support.

2. Limitations on Support. Rogue Wave will have no obligation to provide technical support or may cease providing the Services in the case of or with respect to any incident that is in whole or in part due to, caused by, or resulting from any of the following: (i) a breach by you of this Agreement; (ii) the operational characteristics of your hardware, instances, or infrastructure; (iii) any third party products, software, hardware, equipment, content, data or information, and any modifications, improvements, updates, new versions or new releases thereto or thereof, not provided by the open source community; (iv) any open source package version that has been sunsetted by its community or any version that is greater than current -2 **major** releases back; (v) use of any open source package after Rogue Wave has notified you to cease use thereof under this Agreement; or (vi) your negligence, abuse, misapplication, or misuse of the Supported Packages or the Services. Rogue Wave will have no liability for any changes required by your hardware or software configuration which may be necessary to use any Supported Package due to a workaround, error correction, or maintenance release.

3. Fees, Term, and Termination. You will be billed by Rogue Wave as provided in the Quote. The term of this Agreement will commence on the Effective Date and will remain in effect until terminated by either party as provided below.

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

3.2. Termination for Convenience. Customer may terminate this agreement for convenience upon 14 days’ notice to Rogue Wave; in such event, Customer will forfeit any pre-paid fees and remain liable for any remaining payment installments or other fixed price Fees as per any pending Quote. Termination for convenience under this section will also terminate any pending Quote.

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

4. Ownership and License

4.1. Customer Technology. Any information, data, content, software, methodologies, methods, techniques, concepts, systems, procedures, know-how, or inventions (“**Technology**”) of yours that were acquired, developed or created by, or licensed to you prior to the Effective Date or independent from this Agreement (“**Your Technology**”), and all intellectual property rights therein and relating thereto throughout the world, including, without limitation, all

copyrights, trademarks, service marks, trade secrets, patents, moral rights, contract rights and any and all other legal rights protecting intangible proprietary information (collectively, "IPR"), are and will remain your exclusive property. During the term of this Agreement, you may choose to provide Rogue Wave with access to Your Technology to facilitate Rogue Wave in providing the Services, in which case you grant to Rogue Wave all rights and licenses in and to the Your Technology as may be necessary for Rogue Wave to complete its obligations under this Agreement.

4.2. Open Source Acknowledgement. The Supported Packages are comprised of open source software, which is subject to the terms of the open source software license(s) accompanying or otherwise applicable to that open source software. You acknowledge that your own distribution or deployment of instances containing or linking to the Supported Packages or any other open source software may trigger open source license requirements for which you are responsible. Nothing in this Agreement limits your rights under or grants rights to you that supersede the terms of any applicable open source software license.

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

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

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

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

6. Warranties.

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

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

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

8. Limitation of Liability. ROGUE WAVE WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE), INCLUDING, BY WAY OF EXAMPLE, LOST REVENUE, LOST PROFITS, BUSINESS INTERRUPTION, AND INJURY TO REPUTATION, EVEN IF ROGUE WAVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF ROGUE WAVE RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER FOR SUPPORT PROVIDED BY ROGUE WAVE DURING THE 3 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO SUCH LIABILITY.

9. Confidential Information.

9.1. Confidential Information. For purposes of this Agreement, "Confidential Information" means any data or information regarding the business, finances, services or technology of either party provided to or otherwise obtained

by the other party, including, without limitation, technical, marketing, financial, pricing, employee, and planning information, and any other data or information received or otherwise obtained under this Agreement that a reasonable person should have known, under the circumstances, was confidential or proprietary.

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

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

10. General

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

10.2.Assignment. This Agreement, or any of your rights and obligations under this Agreement, cannot be assigned or otherwise transferred in whole or in part, and any such attempted assignment or transfer by Customer in violation of the foregoing will be null and void.

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

10.4.Relationship of parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between you and Rogue Wave. There are no third-party beneficiaries to this Agreement.

10.5.Waiver. All waivers under this Agreement must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

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

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