

SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE.

This agreement is between Real Time Logic LLC a California limited liability company (**RTL**) and you, the entity or individual entering into this agreement (**Customer**). The RTL software and documentation provided to Customer (**Software**) are licensed and are not sold.

1. **SCOPE.** This agreement describes the licensing of the Software provided to Customer on a commercial basis.
2. **LICENSE.** Subject to the other terms of this agreement, RTL grants Customer a perpetual, non-exclusive, and non-transferable license to:
 - a. Use the Software for commercial uses, including creating derivative works of the Software (**Combined Offering**);
 - b. Make derivative works of the source code snippets provided with the Software (also a **Combined Offering**);
 - c. Operate and distribute Combined Offerings created by Customer from the Software, but only to be used with software derived from RTL's Barracuda Application Server product.
 - d. Make one copy of the Software for archival and backup purposes.
3. **RESTRICTIONS.** Customer is specifically prohibited from:
 - a. Transferring, assigning, sublicensing, or renting the Software on a standalone basis, or using it on a standalone basis in any type of software service provider or outsourcing environment where the functionality of the Software is provided to a third party;
 - b. Causing or permitting the reverse engineering, decompiling, disassembly, or translation of the Software to discover the source code or create a functional equivalent; or
 - c. Evaluating or using, or facilitating the evaluation or use, of the Software for the purpose of competing with RTL.

RTL reserves all rights not expressly granted.

4. **PAYMENT.** Customer will pay all fees due on receipt of an invoice, unless otherwise provided on an order, plus applicable sales, use and other similar taxes.
5. **PROPRIETARY RIGHTS AND MUTUAL CONFIDENTIALITY.**
 - a. **Proprietary Rights.** The Software, workflow processes, Customer interface, designs, know-how and other technologies provided by RTL as part of the Software are the proprietary property of RTL and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with RTL and its licensors. The Software is protected by applicable copyright and other intellectual property laws. Customer may not remove any product identification, copyright, trademark or other notice from the Software. Third party contractors of Customer may use or access the Software, but Customer will be liable for any breaches of this Agreement by such contractors.
 - b. **Mutual Confidentiality.** Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this agreement.

Confidential Information means all information that is disclosed to the recipient (**Recipient**) by the discloser (**Discloser**), and includes, among other things:

- any and all information relating to products or services provided by a Discloser, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts;
- as to RTL the Software and the terms of this agreement.

Confidential Information excludes information that:

- was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser;
- is or becomes a matter of public knowledge through no fault of Recipient;
- is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or
- is independently developed by or for Recipient without use or access to the Confidential Information.

Recipient may disclose Confidential Information if required by law, but it will attempt to provide notice to the Discloser in advance so it may seek a protective order. Each party acknowledges that any misuse of the other party's Confidential Information may cause irreparable harm for which there is no adequate remedy at law. Either party may seek immediate injunctive relief in such event.

6. **WARRANTY, REMEDY and DISCLAIMER.** For new license purchases, RTL warrants that the Software will perform in substantial accordance with its accompanying product documentation for a period of 90 days from the date of the order. This warranty will not apply to any problems caused by third party software, use other than in accordance with the product documentation, or misuse of the Software.

- A. **EXCLUSIVE REMEDY AND SOLE LIABILITY.** If Customer believes there is a breach of the above warranty, then Customer must notify RTL no later than 30 days after the end of the warranty period, and provide reasonable cooperation to RTL. RTL will use commercially reasonable efforts to remedy covered warranty claims within a reasonable period of time or replace the Software, or if RTL cannot do so it will refund to Customer the license fee paid. THIS REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY, AND RTL'S SOLE LIABILITY FOR THESE WARRANTY CLAIMS.
- B. **DISCLAIMER OF WARRANTIES.** RTL DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER UNDERSTANDS THAT THE SOFTWARE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.
7. **TERMINATION.** Either party may terminate this agreement immediately upon a material breach of the other party. Upon termination of this agreement, Customer must discontinue using the Software, de-install and destroy or return the Software and all copies, within 5 days. Upon RTL' request, Customer will provide written certification of such compliance.
8. **ANNUAL SUPPORT.** RTL's technical support and maintenance services for the Software may be purchased separately at the following link - <https://realtimelogic.com/purchase/support/>.
9. **LIMIT ON LIABILITY.** THERE MAY BE SITUATIONS IN WHICH (AS A RESULT OF MATERIAL BREACH OR OTHER LIABILITY) CUSTOMER IS ENTITLED TO MAKE A CLAIM AGAINST RTL. IN EACH SITUATION (REGARDLESS OF THE FORM OF THE LEGAL ACTION (E.G. CONTRACT OR TORT CLAIMS)), RTL IS NOT RESPONSIBLE FOR ANY DAMAGE AND DOES NOT HAVE ANY LIABILITY BEYOND THE GREATER OF THE AMOUNT PAID BY CUSTOMER TO RTL WITHIN THE 12 MONTHS PRIOR TO THE EVENT THAT GAVE RISE TO THE CLAIM AND \$100.

EVEN IF IT KNOWS OF THE POSSIBILITY OF SUCH DAMAGE OR LIABILITY, IN NO CIRCUMSTANCE IS RTL RESPONSIBLE FOR ANY:

- i. LOSS OF, OR DAMAGE TO, DATA OR INFORMATION;
- ii. LOST PROFITS, REVENUE, OR PRODUCTIVITY; OR
- iii. OTHER SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES.

10. INTELLECTUAL PROPERTY INDEMNITY.

- a. **Defense of Third Party Claims.** RTL will defend or settle any third party claims against Customer alleging that the Software violates a copyright, patent, trademark or trade secret, if Customer
- Promptly notifies RTL of the claim in writing;
 - Cooperates with RTL in the defense; and
 - Allows RTL to solely control the defense or settlement of the claim.

Payment. RTL will pay infringement claim defense costs incurred as part of its obligations above, and RTL negotiated settlement amounts, and court awarded damages.

Remedies. If such a claim appears likely, then RTL may modify the Software, procure the necessary rights, or replace it with the functional non-infringing equivalent. If RTL determines that none of these are reasonable available, then RTL may terminate the Software and refund [the license fee (amortized over a 5 year period from the date of the order)] and any prepaid and unused fees.

Exclusions. RTL has no obligation for any claim arising from:

- RTL's compliance with Customer's designs, specification, instructions, or technical information;
- A combination of the Software with other technology where the infringement would not occur but for the combination; or
- Technology not provided by RTL.

This section contains Customer's exclusive remedies and RTL's sole liability for intellectual property infringement claims.

11. **GOVERNING LAW AND EXCLUSIVE FORUM.** This agreement is governed by the laws of the State of California without regard to conflict of law principles. Any dispute arising out of or related to this agreement must be exclusively brought in the state and federal courts for Orange County, California. Customer consents to the personal jurisdiction of such courts and waives any claim that it is an inconvenient forum. The prevailing party in litigation is entitled to recover its attorneys' fees and costs from the other party.

12. OTHER TERMS.

- a. **Entire Agreement.** This agreement constitutes the entire agreement between the parties, and supersedes all prior or contemporaneous negotiations, representations or agreements, whether oral or written, related to this subject matter.

- b. **Non-Assignment.** Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement may be assigned, without the consent of the other party, as part of a merger, or sale of all or substantially all of the business or assets, of a party.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other.
- d. **Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
- e. **Survival of Terms and Force Majeure.** All terms that by their nature survive termination or expiration of this agreement, will survive. Neither party is liable for force majeure events.
- f. **Compliance Audit.** No more than once in any 12-month period and upon at least 30 days advance notice, RTL (or its representative) may audit Customer's usage of the Software at any Customer facility. Customer will cooperate with such audit. Customer agrees to pay within 30 days of written notification any fees applicable to Customer's use of the Software in excess of the license.
- g. **Modification Only in Writing.** No modification or waiver of any term of this agreement is effective unless signed by both parties.
- h. **Export Compliance.** Portions of the Software contain encryption technology. Customer must comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations. Specifically, Customer covenants that it shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any Software (including products derived from or based on such technology) to any other person, entity or destination prohibited by the laws or regulations of the United States, without obtaining prior authorization from the applicable government authority.
- i. **US GOVERNMENT Restricted Rights.** The Software and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. government or any agency thereof 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 C.F.R. 52.227-19, as applicable.
- j. **No PO Terms.** RTL rejects additional or conflicting terms of Customer's form-purchasing document.