

# NON-COMMERCIAL SOFTWARE LICENSE AGREEMENT

**PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE.**

- **AGREEMENT: BY INSTALLING OR USING THE SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT."**
- **CANCEL: IF YOU DO NOT WANT TO AGREE TO THIS AGREEMENT, DO NOT INSTALL OR USE 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 (**User**). The RTL software and documentation provided to User (**Software**) are licensed and are not sold.

## 1. SCOPE.

- This agreement describes the licensing of the Software provided to User on a non-commercial basis.
- If User desires to use the Software on a commercial basis, it must separately purchase a commercial-use license from RTL.

## 2. LICENSE. Subject to the other terms of this agreement, RTL grants User a perpetual, free-of-charge, non-exclusive, non-transferable, non-commercial license to:

- a. Use the Software only (i) in an educational institution environment, (ii) in a personal capacity, or (ii) for non-commercial, evaluation purposes in User's internal business operations, subject to Section 3 (a) below;
- b. Make derivative works of the source code snippets provided with the Software, and to operate and distribute such derivative works, but only with software derived from RTL's Barracuda Application Server product.
- c. Make one copy of the Software for archival and backup purposes.

## 3. RESTRICTIONS. User is specifically prohibited from:

- a. Transferring, assigning, sublicensing, or renting the Software or using it 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. PROPRIETARY RIGHTS AND MUTUAL CONFIDENTIALITY.

- a. **Proprietary Rights.** The Software, workflow processes, user 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. User may not remove any product identification, copyright, trademark or other notice from the Software. Third party contractors of User may use or access the Software, but User 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.

5. **DISCLAIMER OF WARRANTIES.** THE SOFTWARE IS PROVIDED AS-IS. RTL DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. USER UNDERSTANDS THAT THE SOFTWARE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.
6. **TERMINATION.** Either party may terminate this agreement immediately upon a material breach of the other party. Upon termination of this agreement, User must discontinue using the Software, de-install and destroy or return the Software and all copies, within 5 days. Upon RTL's request, User will provide written certification of such compliance.
7. **LIMIT ON LIABILITY.** THERE MAY BE SITUATIONS IN WHICH (AS A RESULT OF MATERIAL BREACH OR OTHER LIABILITY) USER 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 USER 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.

8. **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. User 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.

9. **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 User's usage of the Software at any User facility. User will cooperate with such audit. User agrees to pay within 30 days of written notification any fees applicable to User'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. User must comply with all applicable export control laws of the United States, foreign jurisdictions and other applicable laws and regulations. Specifically, User 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 User's form-purchasing document.