

# Reactis Software License Agreement

## March 2011

BY INSTALLING AND USING THE SOFTWARE PROGRAM(S), YOU CONSENT TO ALL TERMS BELOW. IF YOU DISAGREE WITH THESE TERMS, PLEASE DO NOT INSTALL OR USE THE SOFTWARE.

THIS SOFTWARE LICENSE AGREEMENT (“Agreement”) is made as of the Delivery Date by and between Reactive Systems, Inc. (“RSI”) and you either an individual or an individual acting on behalf of an entity, (“You” or the “Licensee”).

RSI develops and sells computer software products to assist with the design, testing, and validation of software. These include but are not limited to Reactis, Reactis for C Plugin, and Reactis for C.

In consideration of the mutual benefits of the covenants and restrictions herein contained, RSI and Licensee hereby agree as follows:

## 1 DEFINITIONS

1. “Acceptance Period” shall mean a period of time during which the Licensee may cancel this Agreement and receive a full refund.
2. “Authorized Academic User” shall mean an employee of, or enrolled student at a degree-granting educational institution.
3. “Authorized Academic Use” of the Software shall mean use of the Software for teaching, completing course work, or performing non-commercial research.
4. “Authorized Geographic Region” shall mean the locations from which a Floating license may be used.
5. “Delivery Date” shall mean the date that RSI accepts the Licensee’s offer to purchase the Software or Software Maintenance Service.
6. “Documentation” shall mean the Manual and other instructional materials, if any, accompanying the delivery of the Software to the Licensee. Documentation may be provided in print or electronically.
7. “Enhancement” shall mean the object code for modifications to the Software which improve or expand the functionality or features of the Software.
8. “Implement” and variants thereof (including, but not limited to, the terms “implementation”, “implementing” and “implemented”) shall mean to load and make available for user access.
9. “Instance of the Software” shall mean the software design, testing, and validation tool that exists after the Software is invoked and is running on a computer.

10. "License File" shall mean the electronic file that encodes a number of characteristics of a license or set of licenses including (but not limited to): the License Type(s), the number of licenses owned by the Licensee, when the license(s) expire, and when Software Maintenance Service expires. The License File serves as a key that is read by the License Manager to unlock the capabilities of the Software.
11. "License Manager" shall mean the component of the Software that reads the License File and unlocks the capabilities of the Software according to the terms of this Agreement.
12. "License Term" shall mean the duration of This Agreement.
13. "License Type" shall mean one of several purchase options listed in the then-current price list that determine how the Software may be installed and used.
14. "Payment Date" shall mean the date payment is received by RSI from the Licensee for the use of the Software as described in this Agreement.
15. "SMS Term" shall mean the duration of Software Maintenance Service.
16. "Software" or "Software Product" shall mean the executable code (including Enhancements) for a software product sold by RSI. These products include (but are not limited to) Reactis, Reactis for C Plugin, and Reactis for C.
17. "Software Client" shall mean a subset of the executable code for the Software (including Enhancements) that excludes the License Manager.
18. "Software Maintenance Service (SMS)" shall mean the service offered by RSI under which Licensee may obtain technical support and Enhancements.
19. "Unauthorized Access" shall mean any access to the Software or the Documentation except for the exclusive purposes of software design, testing, validation and evaluating the performance, utility and functions of the Software, and training members of Licensee organization in the use of the Software.
20. "Unauthorized User" shall mean any individual who accesses the Software or Documentation except for members of Licensee organization authorized by Licensee to access the Software for the purposes of software design, testing, validation and evaluating the performance, utility and functions of the Software and training members of Licensee organization in the use of the Software.

## **2 ACCEPTANCE**

Licensee may receive a full refund if the Licensee cancels this Agreement for any reason during the Acceptance Period. The Acceptance Period shall end at the earlier of:

1. thirty (30) days after the Delivery Date or
2. the Payment Date

If this Agreement is not canceled during the Acceptance Period, the Software Product shall be deemed accepted for use by Licensee.

## 3 GRANT

RSI hereby grants to Licensee and members of Licensee's organization a non-exclusive and non-transferable license to internally use the Software and to use the Documentation during the License Term and according to the restrictions of the purchased License Type. License Terms are Annual or Perpetual. License Types are Node-Locked, Floating, Academic Node-Locked, Academic Floating, or Demo.

### 3.1 License Term

The License Term of an Annual License shall begin on the Delivery Date and shall end one year after the Delivery Date. Unless the Annual License is renewed by purchasing a new license at the then-current rate, the Software will stop operating at the end of the License Term.

The License Term of a Perpetual License shall begin on the Delivery Date and continue indefinitely unless terminated according to the provisions of this Agreement.

### 3.2 License Types

At the time a license is acquired, the Licensee must select an License Type from the then-current RSI price list. The License Types have the following restrictions.

#### 3.2.1 Node-Locked

The Software may be installed and run on a single computer on which the License File will also reside. Accessing the Software remotely, for example using the Windows Remote Desktop, is prohibited.

#### 3.2.2 Floating

The License Manager may be installed on a single network server on which the License File will also reside. The Software Client may be installed on any number of computers used by members of Licensee's organization so long as all Software Client installations are controlled by the single License Manager and located within the Authorized Geographic Region. The number of Instances of a Software Product that may simultaneously be used under this Agreement may not exceed the number of active Floating Licenses for the Software Product owned by the Licensee. The Software may only be used from within the Authorized Geographic Region.

At the time a Floating License is acquired, the Licensee must select an Authorized Geographic Region from the then-current RSI price list. The following zones are used to define an Authorized Geographic Region:

- Zone A: North America, South America
- Zone B: Europe, Africa
- Zone C: Asia, Australia

RSI offers three options for Authorized Geographic Regions for Floating Licenses:

- 1-Zone License. The license may be used from a single zone.
- 2-Zone License. The license may be used from two zones.
- 3-Zone License. The license may be used from all three zones.

### **3.2.3 Academic Node-Locked**

Use of the Software is subject to all obligations and restrictions of a Node-Locked License. Additionally, the Software may only be used by and Authorized Academic User for Authorized Academic Uses.

### **3.2.4 Academic Floating**

Use of the Software is subject to all obligations and restrictions of a Floating License. Additionally, the Software may only be used by and Authorized Academic User for Authorized Academic Uses.

### **3.2.5 Demo**

The Software may be installed and run only for the purpose of evaluating the capabilities of the Software. Commercial use of the Software is prohibited.

## **3.3 Documentation**

The Documentation may be printed for use by members of Licensee organization. The Documentation may be made available via the Licensee organization's intranet.

## **3.4 Authorized Use**

Licensee shall use reasonable efforts to prevent Unauthorized Users from accessing the Software. Licensee shall use reasonable efforts to prevent Unauthorized Access to the Software. Licensee shall not sell, license, sublicense, rent, or make the Software or Documentation available for use by any person who is not a member of Licensee's organization.

# **4 SOFTWARE MAINTENANCE SERVICE**

Software Maintenance Service (SMS) shall be offered as follows.

## **4.1 SMS Term**

The SMS Term associated with an Annual License shall end when the License Term of said license ends.

The initial SMS Term associated with a Perpetual License shall end one year after the Delivery Date. Thereafter, if RSI continues to offer SMS for the product, SMS may be renewed at the then-current price for a then-offered SMS term. If SMS is not renewed for a license, then reactivation of SMS for the license requires payment a SMS fee for the period during which SMS was inactive for the license.

## **4.2 Customer Consultations**

During the SMS Term, RSI shall provide Licensee with telephone and e-mail consultations to answer questions concerning the installation and use of the Software. All such consultations shall be subject to the discretion of RSI.

## **4.3 Availability**

RSI reserves the right to discontinue SMS for any Software, in whole or in part, at any time.

## **4.4 Upgrades**

During the SMS Term, RSI shall notify Licensee of the availability of Enhancements of the Software for which Licensee owns Licenses and deliver said Enhancements upon request by Licensee. Licensee may obtain and use an Enhancement only if SMS is active when the Enhancement is released.

## **4.5 Modification Requests**

During the SMS Term, upon discovering a defect in or desired modification for the Software, Licensee may request remedy of the defect or implementation of the modification. Implementation of any such remedy or modification shall be subject to the sole and exclusive discretion of RSI.

## **5 TERMINATION**

This Agreement may be terminated at any time by RSI by notifying Licensee in writing if Licensee breaches any material term of this agreement. Licensee may terminate this Agreement at any time, for any reason. The Licensee shall not be entitled to any refund if the Agreement is terminated after the expiration of the Acceptance Period.

Upon termination or cancellation of this Agreement, Licensee shall cease its use of the Software and destroy all Software provided to Licensee by RSI and all copies thereof in the possession of Licensee pursuant to this Agreement.

Sections 6.2, 7, 8, and 9 shall survive the termination of this Agreement.

## **6 WARRANTY**

### **6.1 Warranty**

The services to be provided by RSI hereunder shall conform to the standards generally observed in the industry for similar services. Licensee's sole and exclusive remedy for any breach of the foregoing warranty shall be limited to RSI reperforming the applicable service.

### **6.2 WARRANTY LIMITATION**

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1, THE SOFTWARE, DOCUMENTATION, AND ANY SERVICES PROVIDED BY RSI ARE PROVIDED "AS IS" AND RSI DOES NOT MAKE ANY WARRANTIES EXPRESSED OR IMPLIED REGARDING THE SOFTWARE, DOCUMENTATION OR SUCH SERVICES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY. RSI DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

## **7 INTELLECTUAL PROPERTY**

### **7.1 Ownership and Title**

Title to the Software and Documentation including ownership rights to patents, copyrights, trademarks and trade secrets therein shall be the exclusive property of RSI.

### **7.2 Licensee Comments**

RSI shall exclusively own all rights to suggested modifications to the Software that the Licensee conveys to RSI.

### **7.3 Non-competition; Reverse Engineering**

Licensee shall not use the Software to develop a product determined by RSI to perform the same or similar function as some product of RSI. Licensee may use the Software solely in its original form, and may not change, alter or modify the Software, nor may it create derivative works, or translate, reverse assemble, reverse compile, disassemble, or in any way reverse engineer the Software.

#### **7.4 Confidentiality**

Licensee shall not remove or alter any copyright notices, proprietary legends, tradenames or trademarks affixed by RSI to the Software or Documentation.

### **8 INDEMNIFICATION; LIMITATION OF DAMAGES AND LIABILITY**

#### **8.1 Indemnification**

Licensee shall defend, indemnify and hold harmless RSI, its licensors, officers, directors, employees, agents and resellers from and against any damages or liability arising from use of the Software or the Documentation by Licensee or members of Licensee's organization.

#### **8.2 Limitation of Damages and Liability**

IN NO EVENT SHALL RSI, ITS DIRECTORS, OFFICERS, AGENTS, EMPLOYEES AND AFFILIATES BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHERWISE) EVEN IF RSI HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, DAMAGES FROM INTERRUPTION OF BUSINESS, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF USE OF SOFTWARE, LOSS OF DATA, COST OF RECREATING DATA, COST OF CAPITAL, COST OF ANY SUBSTITUTE SOFTWARE, OR LOSSES CAUSED BY DELAY, OR CLAIMS OF THIRD PARTIES FOR SUCH DAMAGE. IN NO EVENT SHALL RSI'S CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE ACTUAL AMOUNTS PAID BY LICENSEE UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT AND SHALL APPLY EVEN IF THE LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

### **9 MISCELLANEOUS**

#### **9.1 Hardware**

Licensee shall be responsible for acquiring, installing and operating the computer(s) on which Software will run.

#### **9.2 Assignments**

All assignments of rights under this Agreement or Software by Licensee without the prior written consent of RSI shall be void.

#### **9.3 Entire Agreement**

This Agreement contains the entire understanding of the parties and supersedes previous verbal and written agreements between RSI and Licensee concerning the Licensing of Software to Licensee.

#### **9.4 Equitable Remedies**

The parties hereby acknowledge that damages at law may be an inadequate remedy. Therefore, RSI shall have the right of specific performance, injunction or other equitable remedy in the event of a breach of this Agreement by Licensee.

#### **9.5 Amendments and Modifications**

Waivers, alterations, modifications or amendments of a provision of this Agreement shall not be binding unless such waiver, alteration, modification or amendment is in writing and signed by an authorized representative of both parties.

#### **9.6 Severability**

If a provision of this Agreement is rendered invalid, the remaining provisions shall remain in full force and effect.

#### **9.7 Captions**

The headings and captions of this Agreement are inserted for reference purposes only and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph, or provision.

#### **9.8 Governing Law**

This Agreement is governed by the laws of the state of North Carolina. Any dispute with respect to this Agreement shall be brought and heard either in the North Carolina state courts located in Raleigh, North Carolina or the federal district court located in Raleigh, North Carolina. In such even, the parties to this Agreement each consent to the in personam jurisdiction and venue of such courts. The parties agree that service of process upon them in any such action may be made if delivered in person, buy courier service, by telegram, by facsimile or by first class mail, and shall be deemed effectively given upon receipt.

#### **9.9 Pronouns/Gender**

Pronouns shall refer to the masculine, feminine, neuter, singular or plural as the context shall require.

#### **9.10 Waiver**

Waiver of breach of this Agreement shall not constitute waiver of another breach. Failing to enforce a provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision.

#### **9.11 Relationship of the Parties**

It is agreed that the relationship of the parties is primarily that of Licensee and RSI. Nothing herein shall be construed as creating partnership, employment relationship, or agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party maintains its separate identity.

#### **9.12 Assurances**

Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to each other under this Agreement are true, correct and accurate as of the date of this Agreement to the best of their knowledge.

### **9.13 Litigation Expense**

In the event of litigation or arbitration arising out of this Agreement, each party shall pay its own costs and expenses of litigation and arbitration (excluding fees and expenses of arbitrators and administrative fees and expenses of arbitration).

### **9.14 Force Majeure**

RSI shall not be liable for any failure to perform its obligations under this Agreement because of circumstances beyond the control of RSI, which such circumstances shall include (without limitation) natural disaster, terrorism, labor disputes, war, declarations of governments, transportation delays, failure of the Licensee's computer, telecommunications failure and misuse of Software or the Documentation by Licensee. Licensee shall not be liable for any failure to perform its obligations under this Agreement because of circumstances beyond the control of Licensee, which such circumstances shall include (without limitation) natural disaster, terrorism, labor disputes, war, declarations of governments and transportation delays.