

OC SYSTEMS RTI Software License Agreement

END-USER LICENSE AGREEMENT FOR OC Systems Software Product:

RootCause Transaction Instrumentation ("RTI") herein referred to as RTI.

IMPORTANT: READ CAREFULLY!

This OC Systems Software License Agreement ("SLA") is a legal agreement between you, the "Licensee" and OC Systems, Inc. ("OCS") the "Licensor", for use of the Software Product "RTI" as defined below.

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OC Systems, Incorporated ("Licensor") or "OCS" and the Licensee agree as follows:

1.0 DEFINITIONS

1.1 "Target Application" shall mean the software to which RTI is being applied.

1.2 "RTI" shall mean the shared libraries and software to instrument and collect data from the "Target Application" and the User Interface software used to define and view the collected data.

1.3 "Product" shall have the same meaning as RTI.

1.4 "Target Application Environment" shall mean the computer or network on which the Target Application executes"

1.5 Documentation shall mean all documentation accompanying RTI including but not limited to the User's Guide in any form, on-line or printed.

2.0 GRANT OF LICENSE

2.1 OCS grants to Licensee and Licensee hereby accepts a non-exclusive, revocable, and non-transferable software license to RTI. The specific quantities of RTI licensed by OCS to Licensee will be defined in an Order Form, signed by the parties or otherwise accepted by OCS, which may consist of (a) one or more mutually agreed order forms, statements of work, work orders or similar transaction documents, or (b) an order placed by Client through OC Systems' online store accessible from an OC Systems website. The parties agree that the terms of this Agreement will govern all purchases and use by Client of Software and Services unless otherwise agreed by the parties in writing.

2.2 Limited Copying Permitted. Licensee is permitted to make copies of the software only as necessary to use the Product, within the quantities of the signed Order Form. No other copying or distribution of RTI is permitted under this license.

3.0 NO OTHER COPYRIGHT, BACK-UP, AND TRANSFER RIGHTS CONVEYED

3.1 Licensee agrees that it shall not, nor authorize anyone else to, disassemble, reverse engineer or otherwise decompile or translate any part or all of the Java classes or object code provided as RTI.

Licensee shall not modify the Product under any circumstances and Licensee has no right to authorize anyone else to modify, disassemble, or make any copies of the Product.

3.2 Licensee shall be permitted to make copies of the RTI provided that all copies shall be made solely for backup purposes only.

3.3 Licensee's rights in the Product are expressly limited to the rights as set forth in this Agreement. The Product shall at all times remain the property of OCS or its Licensors in whole and in part and Licensee shall have no right, title or interest therein, except as provided in this Agreement.

3.4 Licensee acknowledges that the Product is copyrighted and licensed (not sold) by OCS, or one of its Licensors.

4.0 TERM AND TERMINATION

4.1 The license is effective until terminated. Licensee may terminate the license at any time by giving written notice to OCS, effective as of the date of mailing of said notice. The license will also terminate if Licensee fails to comply with any material term or condition of this Agreement and fails to cure the same within thirty (30) days. Licensee agrees that within thirty (30) days after the termination of this Agreement, Licensee shall destroy or return to OCS the original Product and all copies of RTI in its possession and certify in writing to OCS, that through its best efforts, and to the best of its knowledge, the original RTI and all copies of RTI in its possession have been returned or destroyed, except that Licensee may keep a copy of the Product in its archives.

4.2 Termination of this license for any reason shall not be the basis of a claim of reimbursement.

5.0 REPRESENTATIONS AND WARRANTIES

5.1 OCS represents and warrants that: (a) it has the authority to enter into this Agreement with Client; and (b) to OCS knowledge, OCS branded Software does not, at the time of delivery to Client, include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software.

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7.0 LIMITATION OF LIABILITY

7.1 In no event shall OCS and/or any third party providers of materials under license to Licensor be liable under any legal theory for any damages, including, but not limited to, direct, indirect, special, incidental or consequential damages (including, but not limited to, lost profits or anticipated savings) arising out of the use of or inability to use such Product, even if OCS and/or said third parties have been advised of the possibility of such damages.

8.0 GOVERNMENT AND GOVERNMENT CONTRACTOR LICENSEES

8.1 If Licensee is any unit or agency of the United States Government, or a contractor which will or may supply the Product to any unit or agency of the United States Government, Licensee agrees that: (a) The Product is "Commercial Computer Software" as that term is defined in DoD FAR Supplement 252.227-7013 (a)(1), and in any corresponding DAR and ASPR clauses; (b) OCS represents to Licensee that the Product is developed at private expense, and no part of it was developed with government funds; (c) The government's use of the Product is subject to "Restricted Rights" as that term is defined in DoD FAR Supplement 252.227-7013 (c)(1)(ii); (d) OCS represents that the Product may be deemed a trade secret of OCS for all purposes including for the purpose of the Freedom Of Information Act; (e) Each copy of the Product supplied to the government or to another government contractor will also bear and/or have affixed near it the restricted rights legend.

9.0 PAYMENTS

9.1 Licensee will submit payment in full for all products identified in a signed Order Form hereunder net thirty (30) days from the invoice date for product

10.0 INDEMNIFICATION FOR PATENT AND COPYRIGHT INFRINGEMENT

10.1 Provided Licensee is in compliance with the restrictions of this Agreement, OCS will defend Licensee against suits arising from any valid claim that the Product in the form delivered infringes or violates any patent, copyright, or trademark registered by a third party in the United States of America, Canada, or any member of the European Economic Community, or any member of the European Free Trade Association. Licensor shall have no liability for any above mentioned claim based upon the use of other than the current, unaltered version of the Product available from Licensor if such infringement would have been avoided by the use of a current unaltered version of the Product.

11.0 EXPORT REGULATIONS

11.1 Licensee acknowledges that certain Government Export Regulations prohibit, except under a special validated license, the exportation of technical data relating to certain commodities unless the exporter has received certain written assurances from the foreign importer. Licensee hereby agrees with and gives its assurance to Licensor that Licensee will not knowingly, unless prior authorization as may be required from any relevant governmental agency is obtained, re-export, directly or indirectly, any technical data, or direct by-product thereof, received from Licensor under this Agreement and will not export directly the Licensed Programs, or any products incorporating the Licensed Programs to any country restricted under any governmental regulation. Licensor makes no representations that a license is not required or that, if required, it will be issued by any requisite governmental agency.

12.0 GENERAL

12.1 This Agreement will be governed by the laws of the Commonwealth of Virginia. If any term, provision, or portions thereof, of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, the remaining provisions of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken. Furthermore, failure of Licensor to enforce any term, provision, or portions thereof, of this Agreement shall not void the remainder of this Agreement.

12.2 Any notices to Licensor or other communications required or permitted hereunder shall be sufficiently given when delivered by hand and acknowledged thereof, or sent by certified mail, postage prepaid, addressed as follows: OC Systems Inc., 10521 Rosehaven Street, Suite 210, Fairfax, VA, ATTN: Contracts.

12.3 Licensee acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Licensee further agrees that it is the complete and exclusive statement of the agreement between the parties and except as permitted herein supersedes any proposal or prior

agreement, oral or written, and any other communications between the parties relating to the subject matter of this Agreement.

12.4 No modification, addition to or waiver of any right, obligation or default under this Agreement shall be effective unless in writing and signed by both parties.

12.5 This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors to substantially the entire business and assets of the respective parties hereto. Licensee shall not otherwise assign this Agreement without the prior written consent of OCS. OCS shall not unreasonably withhold such consent.

12.6 Licensee acknowledges that the provisions of Sections 2.2, 3, 4, 5, 6, 7, 8, 11, and 12, survive the expiration or prior termination of this Agreement.

12.7 Licensee is responsible for payment of any taxes, including personal property taxes, resulting from this license.

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