

Terms of Service – 21 June 2023

THIS IS AN AGREEMENT BETWEEN YOU OR THE ENTITY THAT YOU REPRESENT (HEREINAFTER "YOU" OR "YOUR") AND REAL LOAD PTY LTD (Australian ABN: 81 646 837 434) (HEREINAFTER "Real Load", "us", "our") GOVERNING YOUR USE OF OUR PRODUCT AND SERVICES.

Description of Services

Real Load currently offers Load Testing and Synthetic Monitoring services (the "Services") as both a free trial and paid service. The Services enables you to load test and monitor network enabled applications (like websites, API endpoints, etc...). You agree to obtain prior verifiable permission from the owners of such resources that are being load tested or monitored using the Services. The Services are delivered via Cloud Hosted infrastructure, by deploying our software on your own infrastructure or a combination thereof.

Subscription to our Services

You may subscribe to our Services by completing the registration process at our online portal. Real Load reserves the right to modify or discontinue, at any time and from time to time, temporarily or permanently, the services (or any part thereof) with or without notice. You agree that Real Load shall not be liable to you or to any third party for any harm related to, arising out of, or caused by the modification, suspension or discontinuance of the Services for any reason.

In consideration of your use of the Services, you agree to: a) provide true, accurate, current and complete information about yourself as prompted by the Registration Process; and b) maintain and promptly update your Registration data to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, outdated, or incomplete, or if Real Load has reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, Real Load has the right to terminate your Account(s) and refuse current or future use the Services.

Free Trial

If you register for a free trial of the Services, Real Load will make the Services available to you on a trial basis free of charge until the earlier of (i) the end of the free trial period of the Services (unless terminated earlier by you), (ii) the start date of the paid subscription period for the Services, or (iii) termination by Real Load in its sole discretion. We reserve the right to terminate your trial account unless you (i) purchase the corresponding paid subscription plan for the account or (ii) purchase applicable Services upgrades. In the event of such termination, any data that you stored at the Services during the free trial will be permanently lost. Notwithstanding anything contained in this Section, Services is offered as-is during the free trial, without any warranty, covenant, support or liability whatsoever, to the extent permitted by law.

Personal Information and Privacy

Personal information you provide to Real Load through the Services is governed by [Real Load's Privacy Policy](#) and applicable laws related to personal information. Your election to use the Services indicates your acceptance of the terms of the [Real Load's Privacy Policy](#). You are responsible for maintaining the confidentiality of your Account information and other sensitive information you might store in our Services. You are responsible for all activities that occur in your Account and you agree to notify Real Load immediately of any unauthorized Account use at support@realload.com. Real Load is in no way responsible for any loss or damage to you or to any third party incurred because of any unauthorized access and/or use of your Account, disclosure of sensitive information stored in our Services or otherwise.

Publicity

Real Load reserves the right to publish your name and logo in the customer list on our website, press releases, advertisements, brochures and other promotional materials. You should email support@realload.com if you do not wish to permit Real Load to publish your name in the manner mentioned above.

Communications from Real Load

The Services may include certain communications from Real Load, such as service announcements, administrative messages and newsletters. You understand that these communications shall be considered part of using the Services and that you will not be able to opt out of receiving them. Further, Real Load reserves the right to send electronic mail to you, informing you of changes or additions to the Terms of Service.

Fees and Payments

When you subscribe to our paid Services, you agree to pay for the Services in accordance with our price schedule. You can pay for our Services either by credit card or bank transfer. Subscriptions made through credit card will automatically renew, unless you cancel your subscription. You agree to notify Real Load of any changes to your credit card account number and/or its expiration date.

In the event any tax such as GST, VAT, sales tax or the like is chargeable by Real Load in accordance with any local, state, provincial or foreign laws with respect to your subscription to our Services ("Taxes"), Real Load will invoice you for such Taxes. You agree to pay Real Load such Taxes in addition to the subscription fees. Real Load shall provide you with an invoice in the format prescribed by the applicable local, state, provincial or foreign laws to help you avail the applicable input tax credit for the Taxes so paid.

Restrictions on use

In addition to all other terms and conditions of this Agreement, you shall not: (1) transfer or otherwise make available to any third party the services; (2) provide any service based on the services without any prior written permission; (3) use the third party links to sites without agreeing to their website terms & conditions; or (4) use the for illegal purposes; (5) allow user licenses to be shared or used by more than the licensed

individuals; (6) except as permitted under applicable law, attempt to disassemble, reverse engineer or decompile the Services; (7) attempt to gain unauthorized access to the or its related systems or network; (8) use the Services to send or store material containing software viruses, worms or other harmful computer codes, files, scripts or programs; (9) use the Services in any manner that interferes with or disrupts the integrity, security or performance of the Services, its components and the data contained therein; (10) host, display, upload, modify, publish, transmit, store, update or share any information that belongs to another person or entity and to which you do not have any right, including personal or confidential information of any person or entity with respect to which you do not have consent or permission from such person or entity; (11) use the Services for transmitting information that is false and untrue, and is written or published in any form, with the intent to mislead or harass a person, entity or agency for financial gain or to cause any injury to any person; (12) violate any applicable local, state, national or international law; and (13) remove or obscure any proprietary or other notices contained in the Services.

Technical Support

Unless otherwise agreed, technical support services will be provided to you via email by contacting support@reaload.com, for products/services acquired directly from us.

For products/services acquired via a Value Added Reseller, please review your support arrangements with your reseller first.

The support included in our standard fees is not intended to replace Professional Services to develop Real Load test scripts, plugins or other tailored solutions. It is meant to provide answers to specific questions or assist with issues you might have encountered while using our product or services.

Support services will be provided if:

- You're evaluating our products/service during the Free Trial period.
- You've paid all due invoices issued by us.
- Your account is not suspended.

Cloud Hosting Location

The location of the cloud facility from which you are served is Switzerland. We may migrate your account or require you to migrate your account to a different cloud facility in the event of any updates to the region/country to cloud facility mapping at any point of time. You must not mask your internet protocol (IP) address at the time of sign-up since your region/country is determined base on your IP address. If, at any time, your actual region/country is found to be different from the region/country in our records, Real Load may take appropriate action such as migrate your account or require you to migrate your account to the cloud facility corresponding to your region/country or close your account and deny the Services to you. If you are served from a cloud facility outside your region/country and a Real Load group entity has an office in your region/country, apart from storing the data in the cloud facility assigned to you, we may store a local copy of the data in your region/country.

Hosting on your Infrastructure

Should our software implementing our Services be deployed on your own infrastructure, you agree that you'll be solely responsible for direct and indirect costs related to such infrastructure. This includes procurement and licensing of any third-party products (hardware, operating systems, network access fees, etc...) required by our Services to work correctly.

Updates to our software will be made available to you at no cost, during the validity period of a service agreement. Efforts and costs associated with deployment of updates of our software on your own infrastructure doesn't form part of this agreement.

Administrator and Primary Contact

You will be the default administrator of the Real Load account created by you. If you join a Real Load account based on an invitation received from someone, such person will be the default administrator. There must always be a primary contact (and only one primary contact) for a Real Load account who should also be an administrator. The first administrator is the primary contact.

Disclaimer of Warranties

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. REAL LOAD EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. REAL LOAD MAKES NO WARRANTY THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR VIRUS FREE. USE OF THE SERVICE WILL BE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE TELEPHONE, WIRELESS DEVICE OR DATA THAT RESULTS FROM THE USE OF THE SERVICES. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY YOU FROM REAL LOAD, ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF SERVICE.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL REAL LOAD BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS OR DAMAGE WHATSOEVER OR FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER LOSS ARISING OUT OF OR CAUSED BY YOUR USE OF OR INABILITY TO USE THE SERVICE, EVEN IF REAL LOAD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL REAL LOAD'S ENTIRE LIABILITY TO YOU IN RESPECT OF THE SERVICE, WHETHER DIRECT OR INDIRECT, EXCEED ONE THOUSAND AUD (\$1000) OR THE FEES PAID BY YOU TO US DURING THE THREE (3) MONTHS PRIOR TO THE FIRST EVENT GIVING RISE TO SUCH LIABILITY, WHICHEVER IS HIGHER. THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL

OR INCIDENTAL DAMAGES MAY NOT APPLY TO YOU IF YOUR STATE DOES NOT PERMIT SUCH EXCLUSION OR LIMITATION OF LIABILITY.

Indemnification

You agree to indemnify and hold harmless Real Load, its officers, directors, employees, suppliers, and affiliates, from and against any losses, damages, fines and expenses (including attorney's fees and costs) arising out of or relating to any claims that you have used the Services in violation of another party's rights, in violation of any law, in violations of any provisions of these Terms of Service, or any other claim related to your use of the Services.

Termination

You agree that Real Load may terminate your Account and access to the Services for reasons including, but not be limited to, breaches or violations of these Terms of Service or the Real Load Privacy Policy, a request by you to terminate your Account, discontinuance or material modification to the Services, unexpected technical issues or problems, extended periods of inactivity and requests by law enforcement or other government agencies. Termination of your Real Load Account includes termination of access to the Services, deletion of your Account information such as your e-mail ID and Password and deletion of data in your Account as permitted or required by law.

Usage Limits of our Services

Real Load may prescribe usage limits based on the subscription plan chosen by You. You must make sure that Your usage is within the usage limits prescribed by Real Load in order to avail uninterrupted services. You understand that Real Load may restrict an activity if You reach the usage limit corresponding to such activity.

Modification of Terms of Services

Real Load may modify these Terms of Service upon notice to you at any time. You will be provided notice of any such modification by electronic mail or by publishing the changes on the web page. In the event Real Load modifies these Terms of Service, you may terminate your use of the Services. Your continued use of the Services after notice of any change to the Terms of Service will be deemed to be your agreement to the amended Terms of Service.

TERMS FOR USE OF OUR APIs

Integration of Real Load Services with Third Party Applications using APIs provided by us requires technical skill. You understand that errors or defects in the integration may cause loss and corruption of data. You must make sure that You use the services of technically skilled persons for the integration. You agree that Real Load is not liable for any loss and corruption of data caused due to errors or defects in the integration.

You must not try to access any functionality that is not exposed in the documentation for the API. You understand and agree that Real Load will not be liable for the consequences of accessing or using any unexposed functionality of the API.

API Deprecation

Real Load, in its discretion, may cease providing the current version of the API either as a result of discontinuation of the API or upgradation of the API to a newer version. In both cases, the current version of the API will stand deprecated and become the deprecated version of the API (hereinafter "Deprecated Version"). When Real Load decides to deprecate the current version of the API, You will be informed about such deprecation through a service announcement. For a period of three months following announcement of deprecation (hereinafter the "Deprecation Period"), Real Load will use commercially reasonable efforts to support the Deprecated Version. You understand that Real Load is not obliged to provide the features of the newer version in the Deprecated Version.

Real Load in its discretion may cease supporting the Deprecated Version during the Deprecation Period if i) Real Load is required to do so by law or ii) You have breached any provision of these Terms or the General Terms of Service or iii) Real Load determines that supporting the API is likely to result in a security risk to us.

API Usage Limits

Real Load may prescribe usage limits, including limits on the number of calls, number of records per call, bandwidth usage and frequency of calls. You are required to adhere to the usage limits prescribed by Real Load in order to avail uninterrupted Services. You understand that Real Load may restrict an activity if You reach the usage limit corresponding to such activity and that an API call may either fail or be partially executed if the usage limits are reached before or during an API call.

Governing Law and Jurisdiction

This agreement shall be governed by and construed in accordance with the laws of New South Wales and each of the Parties hereby submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia.

END OF TERMS OF SERVICE

If you have any questions or concerns regarding this agreement, please contact us at support@realload.com .