



## RTV Tools – Software End User Licence Agreement

This is a legal agreement between You and RTV. Please read this carefully before You install the Software as by installing the Software You are deemed to have accepted the terms of this Licence.

1. **Interpretation:** In this Licence the following words shall bear the following meanings:
  - (a) **Business Day** – means a day other than a Saturday, Sunday or public holiday in Auckland, New Zealand;
  - (b) **Business Hours** – means 9 am to 5 pm New Zealand time on a Business Day;
  - (c) **Documentation** means one instruction and user manual for the Software and any other documentation provided by RTV with the Software.
  - (d) **Enterprise Licence** means this Licence gives You the right to install the Software on an unlimited number of computers over multiple physical sites.
  - (e) **Improvements** means all modifications, adaptations, developments or improvements to the Software.
  - (f) **Initial Subscription Term** means 12 calendar months from the date you initially install the Software;
  - (g) **Intellectual Property Rights** means means all intellectual and industrial property rights and interests subsisting in or relating to the Software including the source code, trade marks, all brand names, trade names, copyright, patents (including patents pending), designs, artistic works, formulae, methods, plans, data, drawings, specifications, equipment designs, prototypes, products, manufacturing processes, inventions, discoveries, improvements, know-how, experience, trade secrets or other information whether registered or not.
  - (h) **Licence** means the terms and conditions set out in this End User Licence Agreement.
  - (i) **Licence Type** means either:
    - Enterprise Licence;
    - Site Licence;
    - Stand Alone Licence; or
    - Network Licence.
  - (j) **Maintenance and Support** means the maintenance and support provided by RTV to You during the Subscription Term depending on the type of Maintenance and Support you have paid for in your subscription package in accordance with clause 5 of this Licence.
  - (k) **Network Licence** means this Licence gives You the right to install the Software across multiple sites on the number of computers you have

purchased the Network Licence for (eg: 10 Network Licence allows you to install the Software on multiple computers regardless of where they are located but only use the software on 10 computers at the same time).

- (l) **Renewal Term** means 12 calendar months from:
- Expiry of the Initial Subscription Term, or
  - Expiry of the previous Renewal Term where the subscription has previously been renewed,
- (m) **RTV** means RTV Tools Limited which is a duly incorporated company in New Zealand under company number 5491291.
- (n) **Site Licence** means this Licence gives You the right to install the Software on an unlimited number of computers which are on the same physical site.
- (o) **Stand Alone Licence** means this Licence gives You the right to install the Software on a single computer only.
- (p) **Software** means the version of [name software] on sale at the time of your purchase and any Upgrades made by RTV during the Subscription Term, together with the Documentation.
- (q) **Subscription Term** means the Initial Subscription Term plus any Renewal Term(s);
- (r) **Term** means from the date of this Agreement, until it is terminated in accordance with the terms of this Licence.
- (s) **Upgrades** means any revision, new version, update or other modification of the Software released by RTV during the Subscription Term. For the avoidance of doubt, this includes all general patches, improvements, bug fixes or updates loaded, developed or implemented by RTV during the Subscription Term.
- (t) **User** means any of the following:
- The contract manager or software coordinator designated by You during the registration process as Your primary authorised representative to deal with this Licence whom shall be entitled to deal with this Licence on Your behalf including managing Your access to your Software and being responsible for submitting support requests
  - Any individual added through Your account by Your contract manager or software coordinator or by RTV through its registration processes as a User whom shall be entitled to deal with this Licence on Your behalf including managing Your access to your Software and being responsible for submitting support requests;
  - Named callers being any person who RTV has agreed in writing is entitled to submit support requests.
- (u) **You and Your** means the single registered person or entity who downloads the Software.

## 2. **Licence Grant:**

- 2.1 Subject to payment of the licence fees and compliance with the terms of this Licence, RTV grants to You a non-exclusive, non-transferable licence to use and install the executable code version of the Software on the number computers allowed by your Licence Type for the Term on the terms set out in this Licence.
- 2.2 RTV will make available to You all Upgrades which are released during the Subscription Term on the terms and conditions of this Licence.
- 2.3 RTV provides you with the ability to trial the Software for 30 days prior to purchasing the Software. Where You are using the Software on a “free trial” basis, You acknowledge and agree that you do so on the terms set out in this Licence and for the purpose of the limited warranties provided in clause 7, you agree that the warranty commences on the day you first install the Software, not on the date you actually purchase the Software.

## 3. **Restricted Use**

### 3.1 You agree that:

- (a) You will install the Software on the number of computers authorised by Your Licence Type.
- (b) You may make one backup copy of the Software, provided the backup copy is not installed or used on any Computer and on the basis that you are liable for its safekeeping and for any misuse of the backup copy.
- (c) The Licence is personal to You and may not be transferred or sub-licensed.
- (d) You will not:
  - (i) Modify, adapt, reverse engineer, disassemble, decompile or translate the Software or make any attempt at discovering the source code;
  - (ii) Cause or permit the use, copying, modification, rental, lending, lease, redistribution, sublease, sublicense or transfer of the Software;
  - (iii) Create any derivative works based on the Software;
  - (iv) Use the Software on more than one computer;
  - (v) Allow use of the Software by any third party or operate or use the Software for the benefit of any third party;
  - (vi) Reproduce or copy any part of the installation or user manual;
  - (vii) Remove any property notices, labels, trademarks, copyright symbols or similar in the Software that indicate that RTV is the owner of the Software.
- (e) No returns will be accepted by RTV once the Software package has been opened or the Software has been installed.

### 3.2 You acknowledge the Licence does not entitle you to any ownership of the Software, but instead a license to use that Software for the Term.

3.3 You will report any defect or error in the Software to RTV within 10 days of discovery of the defect or error by You.

3.4 You will immediately inform RTV of any actual or claimed infringement of intellectual property rights or any act of unfair competition in relation to the Software.

#### 4. **Upgrades**

4.1 This Licence entitles you to Upgrades during the Initial Subscription Term.

4.2 If you require access to Upgrades following the Initial Subscription Term or any subsequent Subscription Term you are required to renew the subscription prior to the expiry of the current Subscription Term. Renewals can be completed online on RTV's Website, by following the procedure for renewals and payment of the renewal fee which is applicable at the date of the renewal. Any renewal will be on the terms and conditions set out in this Licence.

4.3 If the Subscription Term has not been renewed prior to expiry, then Your right to access Upgrades ceases on expiry of the Subscription Term. If you subsequently want to renew your subscription You will have to purchase a new subscription from RTV and the new subscription will be on the then current terms.

4.4 During the Subscription Term RTV shall provide you with:

4.4.1 Upgrades by way of availability on RTV's website which can be downloaded using the "Check for Updates" function;

4.4.2 Core Software Upgrades approximately 2 times per year and patch Software Upgrades as and when RTV deem them to be necessary.

4.5 For the avoidance of doubt, the Upgrades and Maintenance and Support are for the most current release of the Software and the two immediately preceding releases of the Software only. If Your Software is older than this You will be required to purchase additional Upgrades so that Your Software meets the criteria necessary for Upgrades and Maintenance and Support.

#### 5. **Maintenance / Support**

5.1 Where under your subscription for Upgrades you have also subscribed and paid for additional Maintenance and Support, you shall be entitled to receive the Maintenance and Support you have paid for during the Subscription Term and the terms of this clause shall apply to that Maintenance and Support.

5.2 Where the Maintenance and Support relates to:

5.2.1 Learning Modules - RTV will make available on its website self paced e-learning modules for use by the User.

5.2.2 Web Support:

(a) RTV shall provide web support during Business Hours only,

(b) RTV will use commercially reasonable efforts to respond to a properly submitted request from a User within 4 Business Hours of receipt by RTV with:

(i) A suggested problem resolution; or

- (ii) A request for more detailed information or clarification which will enable RTV to determine a suggested problem resolution; or
- (iii) Where RTV determine the request is outside of the scope of the agree Web Support services, details of the estimated time for delivery of the suggested problem resolution and details of any additional costs associated with providing the additional service.

5.2.3 Site Support: RTV will provide site support in accordance with the terms which are agreed in writing with You.

5.3 Maintenance and Support will only be provided to Your User and You must:

5.3.1 Ensure Your User submits support requests in accordance with the RTV's required procedures;

5.3.2 Maintain a subscription for and promptly install all Upgrades for the Software;

5.3.3 Provide RTV with all information, specifications and other information as may reasonably be required by RTV to provide the support;

5.3.4 Utilise the instructions and troubleshooting procedures provided by RTV (where applicable) prior to initiating a request for support;

5.3.5 Follow the problem determination, problem analysis and service request procedures provided by RTV;

5.3.6 Allow RTV reasonable access to Your systems and the Software including where necessary remote access via the internet;

5.3.7 Back up all of Your data prior to provision of any Maintenance and Support by RTV and provide adequate security for your systems;

5.3.8 Provide all of Your employees and other parties who may use or access the Software with the latest available documentation on the use and operation of the Software as provided by RTV.

5.4 RTV shall only accept requests for Support from Users which:

5.4.1 Arise from installation, configuration or troubleshooting of Software;

5.4.2 Arise from customisation of Software using uncompiled macro languages (such as LISP and VBA) in so far as the macro language commands and functions do not perform as documented; and

5.4.3 Are made in English.

5.5 RTV shall not be required to provide support which is requested as a result of:

5.5.1 Operation of the computer on which the Software is installed in environmental conditions outside those prescribed by the computer manufacturer;

5.5.2 Failure to ensure your employees or any other parties accessing the software are fully trained in the use and operation of the Software;

- 5.5.3 The Software being serviced, maintained or modified by anyone other than RTV or an RTV authorised support provider;
  - 5.5.4 Your computer hardware failing to meet the minimum specifications prescribed by RTV for use with the Software;
  - 5.5.5 Scripting or programming issues or issues related to third party applications, peripherals, networks or operating systems.
  - 5.5.6 You being in breach of any of Your obligations under this Licence.
- 5.6 RTV will use all reasonable endeavours to seek to solve your support request, however you acknowledge and agree that:
- 5.6.1 RTV does not provide any guarantees that the support request will or can be resolved by RTV or that any resolution proposed by RTV will meet Your expectations or requirements;
  - 5.6.2 Any support provided by RTV does not guarantee the operation of the Software will be error free or uninterrupted or that errors will be corrected;
  - 5.6.3 RTV is not responsible for any consequences arising as a result of any failure to resolve the support request.
- 5.7 You acknowledge and agree that all support is provided solely for Your internal use to support Your use of the Software. Any information which is individually addressed, requires a password to access or is otherwise restricted is made available to you in the strict confidence and on the condition that You agree you will not communicate it to third parties without RTV's prior written consent and that no use will be made of this information except in connection with your use of the Software. You further acknowledge and agree that the Software forms part of Your total hardware and software environment to deliver specific functionality and the support you receive may not achieve the results You desire within Your design constraints.
- 5.8 In addition to RTV providing Maintenance and Support, RTV also has authorised support partners who are entitled to provide Maintenance and Support Services. Where Your Maintenance and Support is provided by an RTV authorised support partner, the terms relating to that Maintenance and Support shall be those terms agreed with the authorised support partner and RTV is not responsible in any way for those services.
- 5.9 You irrevocably authorise RTV to provide any information required by an RTV authorised support partner to them to enable them to provide Maintenance and Support services.

## 6. **Icons**

- 6.1 You acknowledge that some icons used in the Software are licensed by RTV under the Creative Commons Attribution 3.0 License and the GNY General Public License, version 2. You agree to abide by the terms of those licences.
- 6.2 You further acknowledge that icons used in the Software and their authors include the RTV Xporter Pro logo, home and ribbon buttons by Duesseldorf <http://pc/de/incons/>, the export, print, license, check for updates and proxy service settings buttons by Gnome Project <http://www.gnome.org/>. Individual authors include Ulisse Perusin, Riccardo Buzzotta, Josef Vyblral, Hylke Bons, Ricardo Gonz-lez, Lapo Calamandrei, Rodney Dawes, Luca Ferretti, Tomas Kusomanen, Andreas Nilsson, Jakub Steiner.

## 7. Limited Warranties

- 7.1 RTV warrants to You that it is the owner of the Software and that the Software shall substantially conform with the information contained in the Documentation for a period of 30 days from the Software purchase date or, where You downloaded the Software under the free trial, 30 days from the date the Software was downloaded. [
- 7.2 If You notify any defect or error in the Software to RTV within 30 days of the earlier of the Software purchase date and the date the Software was downloaded and RTV are not able to fix the defect or error within 30 days of the date of notice from You, RTV will refund to You the price You paid for the Software.
- 7.3 The warranties set out above are the sole and exclusive warranties provided by RTV. To the fullest extent permitted by law, RTV excludes all representations, warranties and conditions implied by statute, at law, by trade, custom or otherwise.
- 7.4 Specifically RTV does not warrant that:
- (a) the Software is appropriate for any particular or specific use or that it will carry out any specific function;
  - (b) that the Software is free of viruses, spy ware or back doors;
  - (c) the Software is bug free;
  - (d) it will provide any Maintenance or Support or that any Maintenance or Support will fix the problem that you have.
- 7.5 In the event of any failure of the Software RTV will be under no obligation to compensate You.
- 7.6 You acknowledge that the Software and any related services are provided for business purposes, and that you will be using the Software in your business, and accordingly the provisions of the Consumer Guarantees Act 1993 do not apply.
- 7.7 You acknowledge for the purpose of the Fair Trading Act 1986 that you are in trade and the exception in section 5D of the Fair Trading Act 1986 applies.

## 8. Limitation of Liability

- 8.1 RTV sole liability to you is to honour the warranty set out in clause 7.1.
- 8.2 RTV is not liable for any risk or loss resulting from Your use of the Software, nor for any possible damage to Your computer system or computer networks which may arise from Your use of the Software.
- 8.3 RTV and its officers, employees, agents or subcontractors, are not liable to You or to any other person for any matter arising out of or in relation to this Licence or the use, or inability to use, the Software or Intellectual Property Rights whether under the law of tort, contract, equity or otherwise for any loss, costs, expenses or damages whatsoever (including loss of profit or any direct, indirect, consequential or special loss or damage, however caused).
- 8.4 Regardless of the legal basis of any claim, RTV's maximum liability to You under any circumstances is limited to a sum not exceeding the amount paid by You for the Software, Upgrades and Maintenance and Support Service (if applicable).

## 9. **Intellectual Property**

- 9.1 Except for the license rights expressly granted in clause 2, RTV retain all right, title and interest in and to the Software. This Licence grants no express or implied license, right or interest in or to any copyright, patent, trade secret, invention or other intellectual property right of RTV, other than the express licenses and rights set out in clause 2.
- 9.2 You acknowledge that all Intellectual Property Rights contained in, comprising or relating to the Software and Documentation are and shall at all times remain the sole property of RTV.
- 9.3 You shall fully disclose to RTV any Improvements and You agree those Improvements shall belong to RTV and you shall sign all documents required to transfer those Improvements into the name of RTV.
- 9.4 If you suggest any Improvements to RTV or any ideas which may become Improvements, You agree those Improvements and ideas shall belong to RTV and you shall sign all documents required to transfer those Improvements and ideas into the name of RTV.

## 10. **Audit**

- 10.1 You irrevocably grant to RTV the right to conduct an audit of Your use of the Software (whether that be by way of a physical inspection of Your premises or an electronic audit) to monitor Your compliance with the terms of this Licence.

## 11. **Termination**

- 11.1 Notwithstanding the Term, RTV may terminate this Licence at any time if:
- (a) You breach this Licence and fail to remedy that breach within 5 days of receipt of notice from RTV requiring You to remedy the breach;
  - (b) You commit a material breach of this Licence which is not capable of being remedied;
  - (c) You become insolvent, bankrupt, go into liquidation, enter into a scheme of arrangement with your creditors, have a receiver or manager appointed or suffer any similar insolvency event;
  - (d) You take any action, or omit to take any action, in relation to the Software or Intellectual Property Rights which in the opinion of RTV has injured or is likely to damage the Software or Intellectual Property Rights of RTV, or injure the reputation of or bring discredit to RTV.
- 11.2 You may terminate this Licence at any time.
- 11.3 On termination You are not entitled to any refund.
- 11.4 On expiration or termination of this Agreement You must immediately cease using the Software and Documentation and, if requested by RTV return all copies of the Software and Documentation to RTV (without retaining any copies).

11.5 If RTV terminates this Licence due to a breach by You of the terms of the Licence, you agree to pay to RTV all of its costs (including legal costs on a full indemnity basis) incurred by RTV in the exercise of its rights under this Licence. You will pay those costs to RTV within 5 days of demand by RTV for payment,

## 12. Disputes

12.1 If You have any a dispute arising out of, or in connection with, this Licence, You must first raise the dispute with RTV and the parties must then use all reasonable efforts to resolve the dispute.

12.2 If the parties are unable to resolve the dispute within 20 days of the date the dispute was first raised, then either party may refer to the dispute to be determined by an independent person appointed by the President for the time being of the New Zealand Law Society.

12.3 The independent person acting under this clause shall act as an expert and the determination of that person shall be binding on the parties.

12.4 The expert may settle or determine the dispute independently.

12.5 The charges of an expert acting under this clause shall be borne equally by the You and RTV and paid upon demand (unless determined otherwise by the expert).

## 13. Notices

13.1 Any notice required under this Licence must be given in writing and may be sent by:

- (a) Letter which shall be deemed to be received 5 days after posting;
- (b) Email which shall be deemed served when the notice enters the information system of the address.

13.2 RTV's address for notices shall be its registered office or support@rtvtools.com

13.3 Your address for notices shall be address and email address given by You at the time of purchase of the Software (unless you have notified RTV in writing of an updated address).

13.4 A notice shall be sufficiently given or served if actually received by a party or a party's solicitor.

## 14. General

14.1 This Licence constitutes the entire agreement between You and RTV and supersedes and replaces any previous agreements and arrangements written and verbal between You and RTV.

14.2 RTV will not be liable for any loss, damage or penalty resulting from delays or failures in performance resulting from acts of God, terrorism, supplier delay or other causes beyond RTV's control.

14.3 RTV may assign or novate its rights under this Licence at any time.

14.4 This Licence is personal to You. You shall not assign or novate Your rights under this Licence without RTV's prior written consent.

- 14.5 You consent to RTV holding and maintaining the details provided by You in the customer information form and other forms completed by You at RTV's offices, or electronically for the purposes of ensuring your compliance with this Licence, recovery of any monies due by You and marketing further products or services to You. You consent to RTV providing information about you to any RTV authorised partner whom you are working with.
- 14.6 Both You and RTV will do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Licence.
- 14.7 Failure by either Your or RTV on any occasion to enforce or require strict or timely compliance with any provision of this Licence shall not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of any such provision.
- 14.8 If any provision of this Licence is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.
- 14.9 This Licence shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.