



## AVIVA SOLUTIONS INC. SOFTWARE LICENSE AGREEMENT

This is a legal agreement (“Agreement”) between you (either an individual or entity) (“You”) and Aviva Solutions Inc. (“Aviva”) for the Aviva software product that this Agreement accompanies.

BY INDICATING YOUR ACCEPTANCE BY CLICKING “YES” BELOW, OR INSTALLING OR USING THE SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF, PRIOR TO USING SUCH SOFTWARE, YOU DECIDE YOU ARE UNWILLING TO AGREE TO THE TERMS OF THIS AGREEMENT, THEN CLICK THE “CANCEL” BUTTON AND THE INSTALLATION PROCESS WILL TERMINATE. SHOULD YOU NOT ACCEPT THESE TERMS, YOU MAY REQUEST A REFUND OF THE LICENSE FEE PAID FOR THE SOFTWARE BY NOTIFYING US WITHIN 30 DAYS OF YOUR PAYMENT OF THE LICENSE FEES AND PROVIDING US WITH PROOF OF PURCHASE

### 1. Definitions

“Authorized User” means any user of the Program that is authorized to access or use a Program that has been licensed by an Organization under the terms of this Agreement, provided that in total, the count of all such users does not exceed the total number of licenses acquired by such Organization.

“Organization” means the person, partnership, entity, corporation, or government entity that licenses the Program.

“Program” means the Aviva proprietary software provided under this license to You, program documentation (refers to the program user manual and program installation guides) and any program updates acquired through technical support.

### 2. Right to Use Program

Your license to use the Program is conditional upon payment of the license fees due.

### 3. License Grant

Subject to the terms of this Agreement and subject to your payment of the appropriate license fees, Aviva hereby grants You a limited, non-exclusive, non-transferable, non-sub licensable, revocable license to download, install and use the Program in machine readable, object code form only, solely for your internal business operations and only as authorized by this Agreement.

### 4. Conditions for License Types

4.1 If the enclosed Program is an evaluation version of an Aviva product, you may use not more than one copy of the Program for evaluation purposes during any pre-determined evaluation period and only in accordance with the documentation to determine whether you are interested in acquiring a license to use the Program. Notwithstanding anything else in this Section 4.1, a Program provided on



an evaluation loan basis shall only be used by You in a non-production laboratory environment, for internal testing purposes only, to determine whether to acquire the Program for fair market value, and only at the site to which the Program is shipped or downloaded. A copy of the results of the evaluation shall be provided to Aviva, but not to any third party. No reviews may be published or provided to third parties. All rights and ownership in the Program shall at all times remain solely with Aviva.

4.2 If the enclosed Program is a single-user version of an Aviva product, you may use not more than one copy of the Program on a single use machine.

4.3 If the enclosed Program is a multi-user or concurrent use version of an Aviva product, you may use up to the licensed number of copies of the Program on single-user computers, file servers, or on workstations of a local area network.

## **5. General License Conditions:**

Except as otherwise expressly provided in this Agreement, the following rights and limitations apply:

5.1 You may copy the Program into any machine readable or printed form for backup purposes only in support of your use of the Program.

5.2 You may use the Program in accordance with any documentation accompanying the Program.

5.3 You may transfer the Program from one Authorized User to another within your Organization if the other individual agrees to accept the terms and conditions of this Agreement. If you transfer the Program you must at the same time either transfer all copies whether in printed or machine readable form to the same party or destroy any copies not transferred.

5.4 You may not rent, lease or otherwise transfer rights to the Program or remove any proprietary notices, labels or marks.

5.5 You may not reverse engineer, create derivative works based on the Program, reproduce, decompile or disassemble the Program (except to the extent that applicable law overrides).

5.6 You may not use, copy, modify, or transfer the Program, in whole or in part, except as expressly provided for in this Agreement.

5.7 You may not distribute the Program to any third parties or permit other entities to use the Program.

5.8 If you transfer possession of any copy of the Program to another party in any way other than expressly permitted in this Agreement, your license is automatically terminated.

5.9 You will take all reasonable precautions to prevent third parties from using the Program or any part thereof in any way that would constitute a breach hereof.



## **6. Export**

Export laws and regulations of Canada and the United States and any other relevant local export laws and regulations apply to the Program. You agree that such export control laws govern your use of the Program (including technical data) and you agree to comply with all such export laws and regulations (including `deemed export` and `deemed re-export` regulations). You agree that no Program will be exported directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

## **7. Term**

The Agreement shall be effective upon Your agreement to be bound by the terms of this Agreement, (as manifested by the conduct described in the preamble above) and shall end upon termination. You may terminate it at any time by destroying the Program and providing written notice to Aviva with the License ID described under "Help" of the terminated Program. Aviva may terminate this Agreement at any time for your breach of this Agreement. Unauthorized copying of the Program or otherwise failing to comply with the license grant of this Agreement will result in automatic termination of this Agreement and will make available to Aviva all other legal remedies. You agree and acknowledge that your material breach of this Agreement shall cause Aviva irreparable harm for which monetary damages alone would be inadequate and that, to the extent permitted by applicable law, Aviva shall be entitled to injunctive or equitable relief without the need for posting a bond. Upon termination of this Agreement the license granted herein will terminate and you must immediately destroy the Program and all back-up copies thereof.

## **8. Limited Warranty**

For a period of ninety (90) days from the date you receive the Program, Aviva warrants that the Program will perform substantially in accordance with the documentation when used as directed ("Limited Warranty"). This Limited Warranty is void if failure of the Program has resulted from modification, accident, abuse or misapplication. This Limited Warranty does not apply to Evaluation Programs which are provided "AS IS" with no warranty whatsoever. AVIVA DOES NOT GUARANTEE THAT THE PROGRAM WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT AVIVA WILL CORRECT ALL PROGRAM ERRORS.

## **9. Customer Remedies**

Aviva's entire liability and your exclusive remedy shall be: at Aviva's option, either (a) return of the price paid or (b) repair or replacement of the Program that does not meet the above Limited Warranty. Any replacement Program will be warranted for the remainder of the original warranty period.

## **10. Liability**



The only type of damages that can be recovered against Aviva arising from or related to this Agreement including without limitation in relation to the provision, use, performance or non-performance of the Program, shall be Your direct damages, if any, and without expanding on the specific remedies set out in Section 8 above (i) in no event shall the aggregate liability of Aviva exceed the amount paid by You for the Program, and (ii) Aviva shall only be liable for damages incurred during the period of such failure, delay or nonperformance of the Program. AVIVA SHALL HAVE NO LIABILITY WHATSOEVER TO YOU OR ANY PARTY CLAIMING BY OR THROUGH YOU FOR THE ACCURACY, TIMELINESS OR CONTINUED AVAILABILITY OF ANY SERVICE OR PROGRAM.

EXCEPT FOR THE LIMITED DIRECT DAMAGES SPECIFIED ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL AVIVA BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL OR PUNITIVE DAMAGES, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR CORRUPTION OR LOSS OF DATA, FAILURES TO TRANSMIT OR RECEIVE ANY DATA, PROBLEMS ASSOCIATED WITH ANY APPLICATIONS USED IN CONJUNCTION WITH THE PROGRAM, DOWNTIME COSTS, LOSS OF THE USE OF THE PROGRAM, COST OF SUBSTITUTE GOODS, FACILITIES, OR SERVICES, COST OF CAPITAL, OR OTHER PECUNIARY LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN INCLUDING WITHOUT LIMITATION THE USE OF OR INABILITY TO USE THE PROGRAM OR ANY THIRD PARTY SOFTWARE, EVEN IF AVIVA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **11. No Other Warranties**

AVIVA DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE, LATENT DEFECTS, OR NON-INFRINGEMENT AND ANY OTHER IMPLIED REPRESENTATION, WARRANTY OR CONDITION ARISING BY STATUTE OR CUSTOM OR USAGE OF TRADE RELATED TO THE PROGRAM. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH MAY VARY FROM JURISDICTION TO JURISDICTION.

SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES AND CONDITIONS. TO THE EXTENT PERMITTED BY LAW, ANY IMPLIED WARRANTIES OR CONDITIONS RELATING TO THE PROGRAM TO THE EXTENT THAT THEY CANNOT BE EXCLUDED AS SET OUT ABOVE ARE LIMITED TO 90 DAYS FROM THE DATE YOU FIRST INSTALLED THE PROGRAM ON ANY COMPUTER.



## 12. Third Party Software

12.1 When you install the Program, you will install software from third party software vendors ("Third Party Software"). Use of the Third Party Software will be governed by licenses or other arrangements between such vendors and yourself, including without limitation those software components noted in Section 13 below.

12.2 You should read carefully the agreements covering the Third Party Software. Each of these agreements can be accessed via the urls provided in Section 13. By installing and using this Third Party Software you accept these Third Party Software licenses or other arrangements and acknowledge that you have read them and understand them. Aviva does not sell, resell, or license any of this Third Party Software, and Aviva disclaims to the maximum extent permitted by applicable law, any responsibility for or liability related to the Third Party Software. Any questions, complaints or claims related to the Third Party Software should be directed to the appropriate vendor.

12.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVIVA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE QUALITY, SAFETY OR SUITABILITY OF ANY THIRD PARTY SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. In no circumstances will we be liable for any indirect, incidental, special or consequential damages to You or any third party (including without limitation, loss of data, loss of profits, computer failure and business interruption), arising out of the use of or inability to use any Third Party Software, even if Aviva has been advised of such damages. Your only right or remedy with respect to any problems or dissatisfaction with any Third Party Software is to de-install and cease use of such Third Party Software.

12.4 You are solely responsible for adequate protection and backup of the data and equipment used in connection with any of the Third Party Software, and Aviva will not be liable for any damages that you may suffer in connection with using, modifying or distributing any of the Third Party Software.

## 13. Third Party Software Components

Oracle (Sun Microsystems) Java <http://www.oracle.com/technetwork/java/javase/terms/license/index.html>

Open SSL <http://www.openssl.org/source/license.html>

Rhino JavaScript: [https://developer.mozilla.org/en/Rhino License](https://developer.mozilla.org/en/Rhino_License)

Telnet Java Socks4 <http://jsocks.sourceforge.net/>

shortcut.exe (<http://optimumx.com/download/#Shortcut>)

MIT VT220 parser: <http://web.mit.edu/dosathena/doc/www/parser.html>



## **14. Intellectual Property**

You do not acquire hereby any intellectual property or other proprietary rights, including patents, designs, trademarks, copyrights or rights in any confidential information or trade-secrets in or relating to the Program. You also do not acquire any rights in or related to the Program, or any components thereof, other than the rights expressly licensed to You under this Agreement or in another mutually agreed upon, written agreement that you may have with Aviva. Any grants not expressly granted herein are reserved. The Programs is only licensed to You as expressly set out herein and is protected by Canadian, U.S. and international copyright and patent laws and international treaty provisions. There are severe penalties both civil and criminal for intellectual property infringement.

## **15. Confidentiality**

You acknowledge and agree that the Program was developed at considerable time and expense by Aviva and is confidential to and contains trade secrets of Aviva. You agree to maintain the Program in strict confidence and not to disclose or provide access thereto to any person except to your employees or contractors with a need for access to exercise the license rights conferred hereby. You do not have the right to obtain or use any source code for the Program, and may not translate, reverse engineer, decompile or disassemble, or otherwise attempt to derive the source code of the Program and agree not to authorize, allow or enable any other person to do so.

## **16. Your Indemnity/Liability.**

You shall defend, indemnify, and hold harmless Aviva, Aviva's suppliers, successors, affiliates, agents and assigns (each a "Aviva Indemnified Party") from any claims, damages, losses, or expenses (including without limitation attorney fees and costs) incurred by a Aviva Indemnified Party in connection with all claims, suits, judgments and causes of action (i) for infringement of patents or other intellectual property or proprietary rights arising from combining with or using any device, system or service in connection with the Program, (ii) for damages arising from Your breach of Sections 3,4,5,6, 12, 13, 14 and 15 herein, (iii) for libel, slander, defamation or infringement of copyright or other intellectual property or proprietary right with respect to material transmitted by You (iv) for any injury, death or property damage arising in connection with the presence, use or non-use of any portion of the Program (other than such damage to person or property (excluding data) that directly arises from the use of the Program strictly in accordance with the documentation and user manuals provided by Aviva which specifically pertains to such Programs) or (v) for claims made by third persons against Aviva arising from or related to Your use of the Program (other than such claims that arise solely from the use of the Program strictly in accordance with the documentation and user manuals provided by Aviva with the Programs which specifically pertains to such Products or Software). No remedy herein conferred upon Aviva is intended to be, nor shall it be construed to be, exclusive of any other remedy provided herein or as allowed by law or in equity, but all such remedies





shall be cumulative. In the event of the termination of this Agreement for Your breach, You shall pay to Aviva all attorney fees, collection fees, and related expenses, expended or incurred by Aviva in the enforcement of any right or privilege hereunder (including, but not limited to, telephone, freight, express and postal charges, expenses of paid investigators and reasonable compensation for time of Aviva's representatives).

## 17. Right to Audit

You agree to keep all usual and proper records and books of accounts and all usual proper entries relating to each reproduction and user of the Program during the term of this Agreement and for a period of three (3) years thereafter. During this period, Aviva may cause an audit to be made of the applicable records in order to verify your compliance with this Agreement and prompt adjustment shall be made to compensate for any errors or omissions disclosed by such audit. Any such audit shall be conducted by an independent certified public accountant selected by Aviva and shall be conducted during the regular business hours at your Organization's offices and in such a manner as not to reasonably interfere with your normal business activities. Any such audit shall be paid for by Aviva unless material discrepancies are disclosed. For such purposes, "material discrepancies" shall mean three percent (3%) or more of the number of Authorized Licenses pursuant to this Agreement. If material discrepancies are disclosed, you agree to pay Aviva for the costs associated with the audit as well as fees for all additional licenses. In no event shall audits be made more frequently than semi-annually unless the immediately preceding audit disclosed a material discrepancy.

## 18. U.S. Government Restricted Rights

The Program provided to any agency or department of the United States Government is provided with restricted rights. By accepting delivery of or installing or using the Program, the U.S. Government or its prime contractor or subcontractor (at any tier) agrees that notwithstanding anything to the contrary, and to the maximum extent possible under federal law: (a) the acquisition of such Program is governed by FAR Part 12 or DFAR 227.7202-4, as applicable and to the extent such provisions are consistent with the Agreement; (b) such Program qualifies as "commercial computer software" under the applicable procurement regulations; (c) any modifications provided by Aviva in connection with such Program are either minor derivative modifications or are of a type generally available in the commercial marketplace; and (d) the U.S. Government will be bound by the commercial terms and conditions and restricted rights contained in the Agreement, and no other license terms shall be incorporated into the Agreement except by mutual written consent. **Contractor/Manufacturer is:** Aviva Solutions Inc. Inc, 185 Dorval Ave suite 303, Dorval, Quebec, CANADA, H9S 5J9.

## 19. General Conditions

**19.1 No Third Party Beneficiaries.** Except as otherwise specifically stated in this Agreement, the provisions herein are for the benefit of the parties and not for any other person or entity.

**19.2 Waivers of Default.** Waiver by either party of any default by the other party shall not be deemed a continuing waiver of such default or a waiver of any other default.



**19.3 Survival.** The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance hereof by either or both Parties shall so survive the completion of performance, cancellation or termination of this Agreement.

**19.4 Governing Law and Dispute Resolution.** If You reside in Canada and the Program is shipped or delivered to You in any format in Canada, this Agreement is to be construed under the laws of the Province of Ontario. Otherwise, this Agreement is to be construed under the laws of the State of New York, excluding any body of law governing conflicts of law. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded in its entirety from application to this Agreement. Any disagreement or dispute arising out of or relating to this Agreement, or the breach thereof which the parties are unable to resolve after good faith negotiations, shall be submitted first to the upper management level of the parties. The parties, through their upper management level representatives shall meet within thirty (30) days of the dispute being referred to them and if the parties are unable to resolve such disagreement or dispute within thirty (30) days of meeting, such disagreement or dispute shall be settled by final and binding arbitration to be conducted in Ontario, Canada in accordance with the Commercial Rules of the American Arbitration Association. Each of the parties shall appoint one arbitrator, and the two arbitrators shall jointly appoint a third arbitrator. Each party shall bear one half of the costs associated with the arbitration proceedings. No dispute between the parties, or involving any person but You, may be jointed or combined together, without the prior written consent of Aviva. Judgment upon the award rendered by the three arbitrators may be entered in any Court having jurisdiction thereof. Notwithstanding the foregoing, Aviva has the right to institute legal or equitable proceedings in a court of law for claims or disputes regarding: (i) amounts owed by You to Aviva in connection with Your license of the Program and Your violation or threatened violation of Sections 3,4,5,6, 12, 13, 14, 15, 16, 17 and 18 of this Agreement. The Parties specifically agree that, in the event that there is a dispute under this Agreement and such dispute is to be resolved in a court of law, such dispute shall not be resolved by jury trial.

**19.5 Severability.** If a provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather (unless a failure of consideration would result therefrom) the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of each party shall be construed and enforced accordingly.

**19.6 Language.** It is the express will of the parties that this Agreement and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

**19.7 Entire Agreement.**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no provisions, representations, undertakings, agreements, or collateral agreements between the parties other than as set out in this Agreement.





Further You acknowledge that no statements or representations made by or on behalf of Aviva have been relied upon by You in agreeing to enter into this Agreement. The Agreement may be amended at any time upon mutual agreement by the parties. Aviva further reserves the right to make changes to this Agreement by providing You with reasonable notice of the change by either e-mail or by posting notice of the change at [www.avivasolutions.com](http://www.avivasolutions.com). If You continue to use the Program more than sixty (60) days after notice of the change has been given, You shall be deemed to have accepted this change.