

RIATest 4 End-User License Agreement

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IMPORTANT, PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT CAREFULLY BEFORE CONTINUING WITH THIS PROGRAM INSTALL: RIATest 4 End-User License Agreement ("EULA") is a legal agreement between you (either an individual or an organization) and Cogitek for the RIATest software product which may include associated software components, media, printed materials, and "online" or electronic documentation ("SOFTWARE"). By installing, copying, or otherwise using the SOFTWARE, you agree to be bound by the terms of this EULA. This license agreement represents the entire agreement concerning the SOFTWARE between you and Cogitek, and it supersedes any prior proposal, representation, or understanding between the parties. If you do not agree to the terms of this EULA, do not install or use the SOFTWARE.

DEFINITIONS

"Cogitek" means Cogitek Inc, 60 Market Square, PO Box 364, Belize City, Belize.

"User" means a person or user account who is licensed to use the SOFTWARE, regardless of whether that person is an employee, contractor, subcontractor, vendor, partner or customer of the Licensee.

"License" means the right to use the SOFTWARE as defined by this EULA.

"Licensee" means the individual or entity (inclusive of affiliates and subsidiaries) that has licensed the SOFTWARE under the terms and conditions of this EULA.

1. LICENSE RESTRICTIONS

EVALUATION LICENSE. You may use the SOFTWARE only for evaluation purposes and only for the term of the evaluation time period.

NAMED LICENSE. You may install and use the SOFTWARE on a single computer provided that you are the only individual using the SOFTWARE. You may install and use the SOFTWARE on another computer, but you must remove the SOFTWARE from all other computers unless you purchase additional licenses. You may make back-up copies of the SOFTWARE for archival purposes. You may install a second copy of the SOFTWARE for your exclusive use on a portable computer or a computer located at your home, provided that you do not use the SOFTWARE on the portable or home computer and on the primary computer at the same time. A separate license is required for each additional computer and/or individual user in all other cases. If you are an organization we grant you the right to designate one individual within your organization to have the sole right to use the SOFTWARE in the manner provided above.

FLOATING LICENSE. You may install the SOFTWARE on an unlimited number of computers and use the SOFTWARE by no more than the authorized number of concurrent users. A separate license is required for each additional concurrent user. Cogitek will provide you with a license key that enables the SOFTWARE for a floating user license up to the authorized number of concurrent users.

2. SOFTWARE TRANSFER. You may permanently transfer your license to use the software to another party only with Cogitek's permission.

3. COPYRIGHT

The SOFTWARE is protected by the international copyright laws, and we retain all intellectual property rights in the SOFTWARE. You may not separately publish, sell, market, distribute, lend, lease, rent, or sublicense the SOFTWARE. The SOFTWARE is licensed, not sold.

4. DISCLAIMER OF WARRANTY.

The SOFTWARE is provided "AS IS" without warranty of any kind. Cogitek and its suppliers disclaim and make no express or implied warranties and specifically disclaim the warranties of merchantability, fitness for a particular purpose and non-infringement of third-party rights. The entire risk as to the quality and performance of the SOFTWARE is with you. Neither Cogitek nor its suppliers warrant that the functions contained in the SOFTWARE will meet your requirements or that the operation of the SOFTWARE will be uninterrupted or error-free. Cogitek is not obligated to provide any updates to the SOFTWARE.

5. LIMITATIONS ON LIABILITY

Your exclusive remedy under this EULA shall be, at our option, either a full refund of the purchase price or correction of the defective SOFTWARE or media. To the fullest extent permitted by applicable law, we disclaim all liability for indirect or consequential damages that arise under this license agreement.

6. PUBLICITY RIGHTS

The licensee grants Cogitek the right to include the licensee as a customer in product promotional material. The licensee can deny Cogitek this right by submitting a written request via email to sales@riatest.com, requesting to be excluded from product promotional material.

7. GENERAL PROVISIONS

7.1. If any part of this agreement is found to be invalid or unenforceable, the remaining terms will stay in effect. This agreement does not prejudice the statutory rights of any party dealing as a consumer.

7.2. This agreement does not supersede any express warranties we made to you. Any modification to this agreement must be agreed to in writing by both parties.

SOFTWARE TECHNICAL SUPPORT AGREEMENT

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1. SCOPE

This Agreement is between Cogitek and the Customer who purchased support services from Cogitek in one of the following ways:

- (a) The Customer purchased the Software licenses and support bundle as offered by Cogitek;
- (b) The Customer purchased the Software licenses without the support option and then purchased support services additionally by placing a separate order.

If the Customer purchased the Software licenses, but did not purchase support services then this Agreement is not applicable and Cogitek has no obligations to provide support to the Customer.

2. DEFINITIONS

In this Agreement

The term "Cogitek" refers to Cogitek, Inc.

The term "Software" means the RIATest 4 software product and associated software components, media, printed materials and "online" or electronic documentation.

The term "Customer" refers to the Licensee of the Software.

The term "Designated Contact" refers to a single named contact person who is appointed by the Customer to liaise with Cogitek over technical Software support issues.

The term "Website" refers to www.riatest.com.

The term "Commencement Date" refers to the date that the license keys were first issued by Cogitek. (Note: If support services are purchased by separate order at a later date to when the license keys were purchased, the Commencement Date is still the date the license keys were purchased.)

The term "Renewal Date" refers to the annual anniversary of the Commencement Date.

3. SUPPORT

Cogitek will establish and maintain an organization and process to provide support for the Software to the Customer. Support shall include

- (i) diagnosis of problems or performance deficiencies of the Software
- (ii) possible resolution of a problem or performance deficiencies of the Software

Cogitek will provide email based software support. Support requests should be submitted via the dedicated pages on the Website. On receipt of a request, Cogitek will issue an automated confirmation message followed later by a fuller, more direct response.

Cogitek will use its best efforts to fix reported and reproducible errors in the Software.

Cogitek will only provide Support Services for the Software to the Designated Contact at the Customer.

4. MAINTENANCE

During the term of this Agreement, Cogitek may provide the Customer with copyrighted patches, updates, releases and new versions of the Software along with other generally available technical material. This maintenance material including the Software may not be used to increase the licensed number of versions or copies of the Software. The Customer agrees not to use or transfer the prior version but to destroy or archive the prior version of the Software. All patches, updates, releases and new versions shall be subject to the original license Agreement covering the Software.

5. WARRANTY

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS OR PROMISES TO CUSTOMER OR ANY THIRD PARTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING BY STATUE, LAW, COURSE OF DEALING, CUSTOM AND PRACTICE OR TRADE USAGE. EXCEPT AS PROVIDED ABOVE, THE SERVICES AND MAINTENANCE ARE PROVIDED "AS IS".

Cogitek is not liable for incidental, special or consequential damages for any reason (including loss of data or other business or property damage), even if foreseeable or if the Customer has advised of such a claim. Cogitek's liability shall not exceed the fees that the Customer has paid under this Agreement.

Cogitek will undertake all reasonable efforts to provide technical assistance under this Agreement and to rectify or provide solutions to problems where the Software does not function as described in the Software documentation. However Cogitek does not guarantee that the problems will be solved or that any item will be error-free.

6. REGISTRATION

To register the Support Services, the Customer must contact Cogitek within thirty (30) days of the Commencement Date, quoting:

- (i) the serial number(s) of the license(s) for which support was purchased
- (ii) the name and contact details of the Designated Contact at the Customer

7. RENEWAL

The Customer will pay Cogitek for Support Services on an annual basis at the Renewal Date.

The renewal fee may increase year-on-year.

Payment of renewal fees must be received by Cogitek by the Renewal Date in order to provide continuation of service.

If the Customer fails to pay the renewal fee at the Renewal Date, but wishes to renew at a later date, the full current annual renewal fee must still be paid and the next Renewal Date will remain unchanged.

8. NEW VERSION RELEASES

Cogitek's policy on upgrade pricing remains unchanged by this Agreement. All purchasers of the Software may receive minor upgrades and hot fixes to the Software for free, but are required to pay for major version releases. (Minor upgrades carry increments to the decimal figure of the version number e.g. 4.0->4.1->4.2, major version releases carry increments to the integer e.g. 3.x->4.0).

9. MULTIPLE PRODUCT PURCHASES

If the Customer has more than one copy of RIATest, then if Support services are purchased, they must be purchased for all copies licensed by the Customer. It is not possible to have Support Services for just some and not all of the Customer's licensed copies of RIATest.

10. GENERAL

(a) Each party acknowledges that it has read this Agreement, they understand the Agreement and agree to be bound by its terms. Further, both parties agree that this is the complete and exclusive statement of the Agreement between the parties, which supersedes and merges all prior proposals, understandings and all other Agreements, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties. The Software and the use thereof is subject to the license agreement related to the Software.

(b) No action, regardless of form, arising out of this Agreement may be brought by the Customer more than one year after the cause of action has arisen.

(c) If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent, deemed to be omitted.

(d) The Customer may not assign or sub-license Customer's rights, duties or obligations under this Agreement to any person or entity, in whole or in part without the prior written consent of Cogitek. A sale of substantially all of the Customer's assets to a third party or any transfer of more than 50% of the voting stock of the Customer to a third party shall not constitute an assignment under this Agreement.

(e) The prevailing party in any action related to this Agreement shall have the right to recover its reasonable expenses including attorney's fees.

(f) Cogitek may, at any time, limit or terminate the supply of Support Services if the Customer uses the Support Services fraudulently or in any other manner deemed abusive by Cogitek.

(g) Resale, assignment and transfer of ownership, without permission from Cogitek, is strictly prohibited and will be grounds for termination of the Support Services.

(h) This Agreement is only applicable to Software running under the certified environments specified in the release notes for that product. Cogitek shall not be required to provide any Support Services relating to problems or issues arising out of or from

(i) the Customer's negligence, misuse, or modification of the Software

(ii) the Customer's use of the Software in a manner for which it was not designed

(iii) support services for Software or third-party products and technologies that Cogitek no longer list on their web site as supported products

Support Services will be provided for the version for which the support was purchased and its minor version upgrades. For example, if the customer bought or upgraded to Version 4.0, support services will be provided for all 4.x versions, but not for 3.x or 5.x.

(i) Cogitek will provide the Customer with substantially the same level of service throughout the term of this Agreement. However, Cogitek reserves the right to discontinue the development of the Software and the Support Services for the Software. This also includes the distribution of older Software versions, which Cogitek may cease at any time at its sole discretion. Subject to the other termination provisions in this document, Cogitek will not discontinue the Support Services for the Software during the current annual term of this Support Agreement.

(j) Cogitek is not obliged to provide technical support for the following requests:

(i) to review Customer's test scripts,

(ii) to help with automating a specific process,

(iii) to help make a custom component or entire application automation-ready,

(iv) to integrate with 3rd party tools and frameworks,

(v) other issues that do not directly involve the running of the Software as determined solely at the discretion of Cogitek.

(k) Cogitek may alter these Support Services from time to time. Details of any changes will be published on the Website. The changes will not result in a reduction in the level of support from that described in this document, or an increase in Support Fees outside of the annual renewal process.