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MES EVALUATION LICENSE AGREEMENT

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"**Third Party**"   shall mean any party other than the Licensor or the Licensee.

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Subject matter of this Agreement is the use of an MES Product by the Licensee that is subject of a License Certificate. The MES Product shall have the functionality and quality specified and described in the Documentation. The Licensee was able to access the Documentation provided on Licensees' request prior to the execution of this Agreement and has informed itself about the functionality of the MES Product and its fitness for the intended use.

3   SCOPE OF LICENSE

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b. Depending on the Licensed MES Product, a timeout mechanism (linger time) may apply. The License Certificate provides information about any linger time applies.

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7   RESTRICTIONS

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7.4   **No Internet, Network Or Virtual Applications** - The Licensee is not authorized to access (directly or indirectly) the MES Product or its license protection mechanism via Internet or network applications (e.g. Citrix, Microsoft Remote Desktop or other terminal/device servers) or to grant Third Parties such access. This restriction does not include the use of the MES Product within the framework of a Floating Network License or within the Continuous Integration License as permitted under Section 4. Furthermore, the Licensee is not authorized to run the MES Product as an application program on a virtual machine separately from a physical PC where this enables the MES Product to be used outside or independently of the number or type of licenses granted.

8   EXPORT

The Licensee undertakes not to use the MES Product in a manner or to ship, transfer or export it to a country to which export is prohibited under the export provisions of the United States or other export laws, restrictions or provisions (hereinafter "Export Laws"). If the MES Product is also subject to export control pursuant to the Export Laws, the Licensee warrants that it is neither a citizen nor a resident of a country on which an embargo has been imposed and the Licensee is not prohibited under the Export Laws from receiving the MES Product. All rights to use the MES Product are granted subject to the condition that those rights are void if the Licensee fails to meet the terms and conditions of this Agreement.

9   AUDIT RIGHTS

Upon at least fifteen (15) days prior notice, the Licensor may audit the Licensee's compliance with the terms and conditions of this Agreement, provided that such audit(s) shall be conducted during normal business hours and in such a manner as not to interfere unreasonably with the operations or to endanger confidential information of the Licensee. Such audits may be conducted only by an independent expert who is subject to professional secrecy or otherwise bound to confidentiality. Such expert may provide the Licensor with such information only – if any – to the extent required by the Licensor to assert claims for and to prosecute Licensee's breaches of intellectual property rights of the Licensor. If such an inspection reveals that the Licensee is not compliant with Agreement, the Licensor may exercise any or all rights and remedies provided under this Agreement or by law, including but not limited to the right to recover the cost of such audit.

10   NO WARRANTY

The MES Product is being submitted "as is". Licensor disclaims all warranties, conditions and representations with regards to the MES Product, including those related to fitness for a particular purpose, satisfactory quality, accuracy or completeness of results, conformance with the documentation, and rights of Third Parties.

11   LICENSORS LIABILITY

No claims for damages may be asserted against the Licensor (including its legal representatives and agents) on any legal grounds whatsoever except in compliance with the following terms:

11.1   The Licensor is liable for intentional acts and in cases where liability is mandatory by law, including, but not restricted to, cases where product liability law applies, where there is culpably caused injury or damage to health or loss of life, or material damage due to the absence from the licensed MES Product of features that are guaranteed by the Licensor.

11.2   If none of the foregoing applies, the Licensor is liable as follows:

a.   In cases of gross negligence. In such cases, the liability for damage to property and assets shall be limited to the amount of damage that might reasonably be predicted, unless the damage is caused by members of the Licensor´s executive body or by the Licensor´s managers, or unless an essential contractual duty, which has to be fulfilled in order to reasonably fulfill the contract and which the contractual partner may reasonably expect to be fulfilled (cardinal duty), is violated.

b.   In cases of slight negligence, in as much as a cardinal duty is violated. In such cases liability for damage to property and financial damage shall be limited to the damage that might reasonably be expected in such cases.

11.3 In the event of data loss, the Licensor is liable under the conditions stated above only for and up to the cost of recovering the data, and only on the condition that proper data backup has been performed by the Licensee.

11.4 No liability is otherwise accepted. This particularly applies to consequential harm caused indirectly by a defect, including loss of profit or non-achievement of savings.

12   MISCELLANEOUS

12.1 **Written Form Requirement** - Any amendments or additions to this Agreement must be made in writing and must be expressly marked as such. This also applies to this written form requirement.

12.2 **Severability** - In the event that any of the above terms is or becomes invalid, the remaining terms shall continue in full force and effect.

12.3 **Headings** - Any headings in the Agreement are included for convenient reference only and shall not affect the interpretation of the Agreement.

12.4 **Waiver** - Any failure to enforce, or any waiver of, any right under the Agreement by the Licensor shall not be construed as a waiver of future rights.

12.5 **Choice of Law** - Except in cases where the provisions of the Agreement differ from the legal regulations, the latter shall apply additionally. This Agreement shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

12.6 **Place of Jurisdiction** - The courts of Berlin, Germany, shall have the exclusive jurisdiction over all disputes arising from or in connection with the Agreement.

12.7 **Trademark Notice** - MES Model Examiner®, MES Test Manager®, MES Quality Commander®, MES M-XRAY®, MES Model & Refactor® are registered trademarks in Germany. All other trademarks referenced in the Documentation are the property of their respective owners.