

## FEV SOFTWARE END-USER LICENSE AGREEMENT (EULA)

### FEV SOFTWARE END-USER LICENSE AGREEMENT

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT CAREFULLY BEFORE INSTALLING OR USING THE SOFTWARE.

This License Agreement (this "Agreement") is a legal agreement between you (either an individual or a single entity, the "Licensee") and FEV Software and Testing Solutions GmbH or one of its affiliates ("FEV", the "Licensor") for the software that accompanies this Agreement, which includes computer software and may include associated media, printed materials, "online" or electronic documentation, and Internet-based services ("Software"). This Agreement is an addendum to the associated INDIVIDUAL LICENSE SCHEDULE (the "Schedule").

Your use of the Software is subject to the terms and conditions of this Agreement, as set forth below, and the Schedule.

IF YOU DO NOT HAVE A VALID LICENSING OF THE SOFTWARE AS SET FORTH IN THE SCHEDULE, YOU ARE NOT AUTHORIZED TO INSTALL, COPY OR OTHERWISE USE THE SOFTWARE AND YOU HAVE NO RIGHTS UNDER THIS AGREEMENT.

BY ACCEPTING THE TERMS OF THIS LICENSE AGREEMENT YOU ARE CONSENTING TO BE BOUND BY THE TERMS OF THIS AGREEMENT BY INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE.

IF YOU DO NOT AGREE TO ALL THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, COPY, OR USE THE SOFTWARE.

#### 1. GRANT OF LICENSE.

Subject to the terms and conditions of this Agreement, FEV grants to the Licensee, and the Licensee accepts from FEV, a non-exclusive, non-transferable license to use the Software, solely for the Licensee's own internal data processing purposes. This license shall be in accordance with the limitations of the license type(s) and in the quantities specified in the Schedule. The license term(s) (duration) shall be as specified in the Schedule, subject to early termination as set forth in this Agreement.

FEV grants you the following rights provided that you comply with all terms and conditions of this Agreement and the associated Schedule:

- 1.1 RESERVATION OF RIGHTS AND OWNERSHIP. FEV reserves all rights not expressly granted to you in this Agreement. The Software is protected by copyright and other intellectual property laws and treaties. FEV or its suppliers own the title, copyright, and other intellectual property rights in the Software. The Software is licensed, not sold.
- 1.2 INSTALLATION AND USE. You may install, use, access, display and run the number of instances of the Software as you are entitled to through the Schedule.
- 1.3 AUTHORIZED USERS. "Authorized Users" are Licensee's (i) employees; and (ii) contractors working on Licensee's premises and have agreed in writing to use restrictions and confidentiality obligations no less restrictive than those set forth in this Agreement. The Licensee shall at all times be responsible for its Authorized Users' compliance with this Agreement.
- 1.4 ACCESS BY AND AUTHENTICATION OF AUTHORIZED USERS. Licensee and its Authorized Users shall be granted access to the

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Software as set forth in the Schedule through a License Management System which is provided by a License Server.

### 2. LICENSE TYPES.

- 2.1 "Lease License" means a license of short-term duration (often a year). Lease Licenses acquired by Licensee shall have a fixed term as set forth in the Schedule, and if no term is specified in the Schedule, the Lease License term shall be one (1) year commencing on the start date specified in the Schedule. Unless otherwise stated in the Schedule, for a Lease License, Maintenance during the license term is included in the Lease License fee. Except for termination for cause, Licensor hereby grants to Licensee a non-exclusive, non-transferable license to use the Software during the term as set forth in the Schedule. Such use shall be in accordance with the provisions of this Agreement, subject to termination as set forth in this Agreement.
- 2.2 "Paid-up License" means a license which has a term commencing on the start date specified in the Schedule and continuing perpetually. Except for termination for cause, Licensor hereby grants to Licensee a non-exclusive, non-transferable license, royalty-free, perpetual license to use the Software. Such use shall be in accordance with the provisions of this Agreement, subject to termination as set forth in this Agreement.
- 2.3 "Evaluation License" and Not for Resale Software. Software provided under an Evaluation License or identified as "Not for Resale" or "NFR" in the Schedule may not be sold or otherwise transferred for value, or used for any purpose other than demonstration, test or evaluation. If Software is licensed to Licensee under an Evaluation License the Licensee agrees that, NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT: (i) Licensee may use such Software for evaluation, non-production purposes only; (ii) the term (duration) of the evaluation license shall be as set forth in the Schedule but shall in no event exceed ninety (90) days; (iii) since the Software is lent free of charge exclusively for the purposes mentioned before, Licensee shall have no claims in the event of defects in material or defects in title of the Software; (iv) FEV has no obligation to provide any maintenance for such Software.

### 3. LICENSE MODELS.

- 3.1 Node-lock License: If the Licensee acquires a Node-lock License, installation and use of the Software will be limited to a single computer. The number of target host-ID's may not exceed the number of Node-lock License(s) purchased. Software licensed under a Node-lock License may only be accessed or used by Authorized Users who are at the Installation Site, i.e. the Licensee facility identified in the Schedule where the Licensee's License Server resides.
- 3.2 Named User License: If the Licensee acquires a Named User License, access and use will be restricted to the individual named user identified in the license management portion of the Software. Each named user designated by the Licensee must be an individual who at all times during the designation meets the definition of an "Authorized User". Group or shared logins are strictly prohibited.

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3.3 Floating (Network) Licenses: If the Licensee acquires a floating Local Network License, Country Network License, Regional Network License, or Worldwide Network License, access to and use of the Software will be controlled by a License Server and Authorized Users may access and use the Software on Licensee's machines served by the License Server, provided that access to and use of the Software at any one time does not exceed the number of floating licenses acquired by Licensee for that Software. In addition, the Licensee shall strictly comply with the following restrictions: (i) if Licensee acquires a Local Network License (also sometimes referred to simply as a Network License), the Software may only be accessed or used by Authorized Users at the Installation Site, or if Licensee's local area network is shared by a grouping of Licensee facilities, then by Authorized Users at any Licensee facility within ten (10) miles of the Installation Site; (ii) if Licensee acquires a Country Network License, the Software may only be accessed or used by Authorized Users at Licensee facilities located within the country where the Installation Site is located; (iii) if Licensee acquires a Regional Network License, the Software may only be accessed or used by Authorized Users at Licensee's facilities located in the region designated in the Schedule; or (iv) if Licensee acquires a Worldwide Network License, the Software may be accessed or used by Authorized Users at Licensee's facilities located worldwide. Any network (floating) license acquired by Licensee hereunder shall be deemed a Local Network License, unless expressly identified in the Schedule as a "Country", "Regional" or "Worldwide" Network License.

## 4. RESTRICTIONS AND PROTECTIONS.

- 4.1 The Licensee acknowledges that the Software and its structure, organization and source code constitute and contain valuable trade secrets of FEV and/or its suppliers. Accordingly, the Licensee shall not: (i) reverse-engineer, decompile, disassemble or otherwise attempt to derive the source code for the Software, or allow any third party to do the foregoing, except to the extent explicitly permitted by applicable law without possibility of contractual waiver; (ii) modify, adapt, alter, translate or create derivative works from the Software or Documentation; (iii) allow any third party to access or use the Software on a service bureau, application service provider, time-sharing, or similar basis; (iv) disable, modify or circumvent the license management system provided with the Software; (v) remove, alter, or obscure any proprietary notices, labels, or marks from the Software or Documentation; (vi) disclose results of any Software benchmark tests without FEV's prior written consent; (vii) disclose, display, or permit access to or use of the Software or Documentation by persons other than Authorized Users using the Software and Documentation within the scope of the license acquired by the Licensee; or (viii) otherwise use or copy the Software or Documentation except as expressly permitted under this Agreement. The Licensee agrees to notify FEV immediately of any unauthorized access to or use of the Software.
- 4.2 The Licensee shall not sublicense, rent, loan or lease, all

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or part of the Software or Documentation to any third party. In the case that the Licensee has obtained the Software or Documentation by electronic download the Licensee shall not sell or otherwise transfer all or part of the Software or Documentation to any third party.

- 4.3 The Licensee may copy the Software as reasonably required in conjunction with permitted use under this Agreement and for backup purposes. Any such copies made by the Licensee must reproduce and include, in exact form, all proprietary rights notices. The Licensee shall maintain records of the location of each copy of the Software, and the location and identity of the computers on which the Software is installed.
- 4.4 The Software and Documentation, and all worldwide intellectual property rights therein, are and remain the property of FEV and/or its suppliers. Nothing in this Agreement will be deemed to convey to the Licensee any title, ownership, or other intellectual property rights in or related to the Software or Documentation, and the Licensee agrees not to assert any such rights. All rights in and to the Software and Documentation not expressly granted to the Licensee in this Agreement are reserved by FEV and/or its suppliers.
- 4.5 Upon not less than fifteen (15) days written notice, FEV may audit Licensee's installation and use of the Software and Documentation. The Licensee shall cooperate with FEV's audit and provide reasonable assistance and access to information. In addition to any other remedies available to FEV, the Licensee agrees to pay within thirty (30) days of written notification any fees and charges applicable to Licensee's use of the Software and Documentation in excess of Licensee's license rights. FEV shall not be responsible for the Licensee's costs incurred in cooperating with the audit. FEV shall comply with the Licensee's reasonable security procedures while on Licensee's facilities.
- 4.6 Except as required by applicable law, or as necessary for the Licensee to enforce or exercise its rights hereunder, the Licensee shall not disclose the terms of this Agreement or FEV's pricing in connection with this Agreement to any third-party.
5. MAINTENANCE.
- 5.1 If the Licensee acquires Maintenance for Software, then during the applicable Maintenance term and subject to the terms and conditions of this Agreement, FEV will provide the Licensee with error corrections and subsequent releases of the Software (and updated Documentation), if any, that FEV, in its sole discretion, makes generally available at no additional charge to its end-users who are on Maintenance. Maintenance shall not entitle the Licensee to any release, option, module, or future product, which FEV, in its sole discretion, licenses separately or offers for an additional fee. FEV is under no obligation to develop any future programs or functionality. FEV reserves the right to discontinue, in whole or in part, and at any time, offering Maintenance for any Software or platform.
- 5.2 Further, if the Licensee acquires Maintenance for Software, during the applicable Maintenance term and subject to the terms and conditions of this Agreement, FEV will provide the

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Licensee with technical support in English or German via telephone, email and any other means FEV, in its sole discretion, makes generally available from time to time under technical support. Technical support is provided only for the then-current major release and the immediately preceding major release (as designated by FEV) of the Software, running unaltered, and on an appropriate hardware and operating system configuration, as specified in the applicable Documentation. Technical support is limited to reasonable assistance in response to Licensee's technical support inquiries regarding: (i) Software installation; (ii) Software errors; and (iii) general questions regarding the usage of Software features. Technical support does not include training, consulting, on-site services, or the provision of engineering judgment for a customer-specific simulation. Upon FEV's request, the Licensee shall provide information required by FEV to verify that the Licensee and the specific license are entitled to technical support. To allow FEV to properly address technical issues, FEV may request that the Licensee provides files and other materials and information.

- 5.3 Unless otherwise agreed to by the parties in writing, to purchase any Maintenance, the Licensee is required to purchase Maintenance for all Software the Licensee has licensed from FEV. In the event that Maintenance expires or was not originally purchased, upon the commencement of Maintenance a reinstatement fee will be assessed in accordance with FEV's then current policies. In addition to any other remedies available to FEV, FEV reserves the right to refuse to provide Maintenance if the Licensee is overdue on any payment obligation under this Agreement.
- 5.4 FEV's sole and exclusive liability, and Licensee's sole and exclusive remedy, for a failure to meet any obligation under Maintenance and failure to cure such deficiency after thirty (30) days written notice will be that the Licensee may terminate Maintenance for the Software involved and receive a pro-rata return of any Maintenance fees paid for the remaining unused Maintenance period of the Software involved. FEV's liability for damages is exclusively covered by section 13.
6. INSTALLATION AND AUTHORIZATION CODES.
- 6.1 The Licensee may install the Software only on the applicable License Server identified in the Schedule, provided however that in the case of a Floating (Network) License or a Named User License the Licensee may install the Software on Licensee's client machines within the scope of the license type acquired, as long as use of the Software is controlled by the Licensee's License Server. The Licensee shall be responsible for installation of the Software and all associated costs. The Licensee may only relocate the License Server with FEV's prior written consent.
- 6.2 The Software may require authorization codes (also known as "license keys") to run. Any such required authorization codes will be issued in accordance with FEV's then-current license management policy. The Licensee shall provide FEV with the host identifier and any other information reasonably required by FEV for each License Server to permit

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FEV to generate the necessary authorization codes. No authorization codes will be provided for any version of the Software which has been replaced by a more recent version.

- 6.3 FEV reserves the right to charge FEV's then-current standard hardware transfer fees whenever FEV, in response to a Licensee request, generates and delivers to the Licensee replacement authorization codes due to a change to the License Server. Prior to any such delivery, the Licensee shall complete, sign and submit FEV's standard hardware transfer request form. The Licensee may temporarily use the Software on hardware other than the License Server, to the extent and for as long as the operation of the Software on the License Server is not possible due to an equipment defect. FEV does not provide replacement authorization codes for changes to the License Server if: (i) the average useful life of the Software is exceeded; (ii) the Software is not supported on the proposed substitute computer; (iii) the proposed substitute computer is not approved by FEV for the use of the Software; or if (iv) Licensee is in breach of this Agreement.

7. **TERM.**

This Agreement will be effective as of the start date as set forth in the Schedule and shall continue in effect in accordance with the Licence Types specified in the Schedule and as set forth in sections 2.1, 2.2 and 2.3, commencing on the start date as specified in the Schedule.

8. **RENEWAL.**

- 8.1 Lease Licenses. Unless agreed otherwise for a specific Schedule, the initial lease term shall begin on the start date set forth in the Schedule and expires on the end date set forth in the Schedule. The Lease License shall be renewable for a successive term of at least three (3) months. FEV reserves the right to change pricing for upcoming renewals.
- 8.2 Maintenance. Unless agreed otherwise for a specific Schedule, if Maintenance is acquired, the initial Maintenance term shall begin on the start date set forth in the Schedule and continue until the first anniversary of such start date. Thereafter, Maintenance under that Schedule shall automatically renew for successive annual terms, unless either party notifies the other in writing of the intent not to renew at least 90 days prior to any upcoming renewal term. FEV reserves the right to change pricing for upcoming annual renewals by providing the Licensee with written notice of the new pricing at least 120 days prior to the upcoming renewal term in which the new pricing is to take effect. If the Licensee decides not to renew Maintenance under the new pricing, the Licensee may notify FEV in writing of the intent not to renew at least 90 days prior to the renewal term in which the new pricing is to take.

9. **(EARLY) TERMINATION.**

- 9.1 This Agreement will remain in full force until terminated in accordance with this Agreement. Except where otherwise provided in this Agreement, this Agreement may be terminated

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as follows: (i) by either party upon not less than thirty (30) days prior written notice to the other party upon the occurrence of a material breach by the other party of its obligations under this Agreement if such breach remains uncured at the end of the notice period, provided however that no cure period shall apply as to any material breach of sections 1, 2, 3, 4, 10 of this Agreement by the Licensee and FEV may terminate this Agreement effective immediately upon written notice; or (ii) by FEV upon not less than fifteen (15) days prior written notice to the Licensee, if no licenses are pending under this Agreement (e. g. , no licenses are purchased by the Licensee or purchased licenses have expired or are terminated); or (iii) by FEV if the Licensee becomes insolvent or an order or an application is made or a resolution passed or documents are filed or faxed with a court for the administration, winding-up or dissolution of the Licensee (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee, supervisor or similar officer is appointed to the Licensee or over all or any of the assets of the Licensee or notice is given of the intention to make such an appointment or a moratorium is sought or declared in respect of the Licensee or the Licensee enters into or proposes any composition or arrangement with its creditors generally, or takes any step with a view to rescheduling or restructuring any of its indebtedness or anything analogous to the foregoing occurs in any applicable jurisdiction.

9.2 Upon termination of this Agreement, all licenses and Maintenance rights granted to the Licensee under this Agreement will automatically terminate, and the Licensee agrees to immediately cease using all Software and Documentation and promptly uninstall and erase all Software and Documentation and related authorization codes from all Licensee's computers. Within fifteen (15) days following termination, the Licensee shall return or destroy (at FEV's sole option) all originals and copies of the Software and related authorization codes and Documentation, and upon FEV's request, certify in writing that it has returned or destroyed (as applicable) all such originals and copies. Termination of this Agreement shall not relieve the parties from any obligation accrued before the date of termination. Provisions that survive termination of this Agreement include those in sections 4, 5.4, 7, 10, 11, 12, 13, 14, 15 and others which by their nature are intended to survive.

10. EXPORT RESTRICTIONS.

The Licensee acknowledges that this Agreement and all orders and licenses hereunder are subject to German and United States and other applicable laws and regulations relating to export controls. The Licensee shall comply with all applicable export control laws and regulations and further agrees not to export or re-export the Software, Documentation, technical data or other deliverables provided under this Agreement without: (i) FEV's prior written approval; and (ii) obtaining, at Licensee's sole cost and expense, any required authorization from the applicable governmental authority as may be required by law. Upon FEV's request, the Licensee shall

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promptly cooperate with FEV and provide FEV with any end-user certificates, affidavits, or other documents reasonably requested by FEV in connection with the exporting or importing of any products or services under this Agreement.

### 11. FEES, TAXES AND PAYMENT.

- 11.1 The Licensee shall pay in full all fees payable under this Agreement, including all fees under any order schedule. Fees are exclusive of all applicable sales, use, value added, and other taxes (and all applicable tariffs, customs duties and similar charges), and the Licensee will be responsible for payment of all such taxes (other than taxes based on FEV's net income), tariffs, duties and charges (and any related penalties and interest), payable in connection with this Agreement or the provision of Software and Maintenance hereunder. If the Licensee is claiming tax exemption status, Licensee must provide a copy of a valid tax exemption certificate.
- 11.2 All fees will be due and payable in EURO within thirty (30) days from the invoice date. Any amount not paid within 30 days from receipt of the invoice will bear interest until paid at the rate of 8 percent points per annum above the applicable base rate. In addition, the Licensee will reimburse FEV for any reasonable legal fees and other costs and expenses incurred in collecting past due amounts. Licensee's payment obligations under this Agreement and any order schedule are non-cancellable and the sums paid nonrefundable, except as expressly stated otherwise in this Agreement.
- 11.3 The Licensee may perform a set-off only with counterclaims that are uncontested or have been decided res judicata or assert a right of retention based on such claims.

### 12. WARRANTY; LIMITATIONS.

- 12.1 The Software when used as permitted under this Agreement and in accordance with the instructions in the Documentation (including use on a computer hardware and operating system platform supported by FEV) will conform substantially to its associated Documentation. For Software used under a Paid-up License the warranty period shall be limited to twelve (12) months from the delivery date. Any claim by the Licensee of a defect must be noticed.
- 12.2 Guarantees shall be binding on FEV only if designated as such in an offer and the corresponding Schedule also specifying in detail FEV's obligations arising from such guarantee.
- 12.3 The Licensee's exclusive remedy, and FEV's sole liability, for Software that does not meet the requirements set forth in section 12.1 will be, at FEV's option: (i) to correct the defective Software within a reasonable time; (ii) to replace the defective Software with another FEV software offering of substantially similar functionality; or (iii) if (i) or (ii) fail, permit the Licensee to (in case of a Lease License) terminate or (in case of a Paid-up License) rescind the license as to the defective Software. In case of termination or rescission, associated, unused Maintenance fees actually paid to FEV will be refunded. FEV will have no responsibility or obligation with respect to: (a) any



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Software that has been modified by anyone other than FEV or its agents, or (b) failure of the Software caused by the Licensee or its agents through accident, abuse or misapplication. FEV may refuse to correct or replace the defective Software if the defect is immaterial. In such cases, any right to withdraw from the Agreement and any claim for compensation of expenses after remedy of the defective Software by the Licensee itself shall be excluded.

- 12.4 The Licensee's claims for defective Software are excluded if the Licensee does not give written notification of defects at the latest within one week of delivery of the Software, and upon delivery non-recognizable defects at the latest within one week of their discovery.
- 12.5 The rights of the Licensee under section 12.1 shall not exist in the case of non-reproducible defects or defects caused by the use of the Software in excess of the rights granted by means of this Agreement or in derogation of the instructions set out in the Documentation, especially the use of the Software on a platform not supported by FEV, the use of the Software in connection with data and programs not supplied by FEV, or created through the inadmissible modification of the Software by the Licensee.
- 12.6 Any further warranty claims whatsoever shall be excluded without prejudice to any claims for damage and infringement of intellectual property rights restricted subject to the rights pursuant to sections 13 and 14.

13. LIABILITY; LIMITATIONS.

- 13.1 The Licensee acknowledges that the Software along with the Documentation, Maintenance and any Services provided hereunder are only an aid in the Licensee's development of Licensee's products and is not intended as a substitute for engineering judgment. FEV will not be liable in any manner whatsoever for the data output obtained through use of the Software. The Licensee shall, at its own expense, indemnify, defend and hold FEV harmless from and against any claim(s) brought against FEV by a third party arising out of, or related to, the Licensee's use of the data output and/or expected commercial success obtained from use of the Software.
- 13.2 FEV shall be liable for damage only to the extent that (i) it is caused by FEV through gross negligence if such is due to a material breach of duty, which endangers the achievement of the objective of the Agreement, or to a failure to comply with duties, the very fulfillment of which is an essential prerequisite for the proper performance of the Agreement and on the observance of which the Licensee may rely; or (ii) it is caused by gross negligence or willful intent on FEV's part; or (iii) results from the assumption of a guarantee.
- 13.3 If FEV is (i) liable in the cases of section 13.2 (i); or (ii) for a grossly negligent violation through simple vicarious agents (i. e. not officers or executives) of FEV; or (iii) in the event of the assumption of a guarantee, unless a guarantee was expressly assumed by FEV as seller and/or entrepreneur towards the Licensee as purchaser and/or ordering party for the condition of the Software and/or the rendering of a performance intended to bring about a certain

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- result, FEV's liability shall be restricted to the damage typically foreseeable for such type of Agreement.
- 13.4 In the cases of section 13.2 no liability shall exist for indirect damage, consequential damage caused by defect or loss of profit.
- 13.5 In the cases of section 13.2 and 13.3 FEV's entire liability shall be limited to EUROS 500,000.00 for personal injury and damage to property, and to the existing order value for mere pecuniary losses.
- 13.6 The Licensee shall take adequate precautionary measures against the loss of data, in particular by making, at least once daily, back-up copies of all programs and data in machine-readable form. FEV shall not be liable for the loss of data and programs to the extent that this would have been avoidable by adherence to this obligation. In all other points, any liability on FEV's part for loss of data shall be subject to the limitations of this section 13.
- 13.7 In the cases mentioned in section 13.2, the Licensee's claims for damages shall become statute-barred at the latest two (2) years from the date on which the Licensor obtains knowledge of the damage, irrespective of this knowledge, the Licensee's claims for damages in the cases mentioned in section 13.2 shall become statute-barred at the latest three (3) years from the date of the damaging event. For claims based on defects, the statute of limitations under section 12.1 shall apply. For claims based on the infringement of intellectual property rights of third parties, the statute of limitations pursuant to section 14.4 shall apply.
- 13.8 Except for cases of liability under the German Product Liability Act, in the event of injury to life, body and health, for defects after assumption of a guarantee by FEV as seller and/or entrepreneur towards the Licensee as purchaser and/or ordering party for the condition of the Software and/or the rendering of a performance intended to bring about a certain result, or in the event of fraudulently concealed defects, the foregoing liability restrictions and statute of limitations shall apply for all claims for damages, irrespective of their legal cause, including claims based on tort.
- 13.9 If the Licensee acquired a Lease License, the liability of FEV for initial defects of the Software irrespective of fault (sec. 536a(1)(1) German Civil Code [BGB]) is excluded.
- 13.10 The aforementioned liability restrictions shall include claims against employees of, or persons authorized by, FEV.
14. INTELLECTUAL PROPERTY INDEMNITY.
- 14.1 FEV shall, at its own expense and subject to the terms of this Agreement indemnify, defend and hold the Licensee harmless from and against any claim(s) brought against the Licensee by a third party alleging that the Software or any portion thereof as furnished under this Agreement and used within the scope of the licenses granted to the Licensee infringes any copyrights, trademarks or patents, provided that the Licensee gives FEV: (i) prompt written notice of such claim; (ii) assistance and information reasonably requested by FEV; and (iii) the sole authority to defend and settle such claim.
- 14.2 Notwithstanding the provision of section 14.1, FEV shall

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have no liability for any infringement arising from: (i) the integration or combination of the Software together with other software, materials or products not integrated or combined by FEV, if the infringement would have been avoided in the absence of such integration or combination; (ii) the use of other than a current unaltered release of the Software available from FEV, if the infringement would have been avoided by the use of the then-current release; (iii) modifications to the Software that were not authorized by FEV or were undertaken at the request of or direction of the Licensee; or (iv) Licensee's use of the Software in a manner that does not comply with this Agreement.

14.3 If the Software becomes, or in FEV's opinion is likely to become, the subject of an infringement claim, FEV may, at its sole option and expense, either: (i) substitute non-infringing software of substantially similar functionality; (ii) modify the infringing Software so that it no longer infringes but remains substantially similar in functionality; (iii) obtain for the Licensee, at FEV's expense, the right to continue use of such Software; or (iv) if none of the foregoing is commercially feasible, FEV will take back the Software involved, and grant the Licensee a refund or credit for the unused portion of the license fee and associated unused Maintenance fees actually paid to FEV for the Software involved, using a straight line amortization over sixty (60) months from initial delivery for Paid-up License(s). This section 14 states FEV's entire liability and Licensee's sole and exclusive remedy for infringement claims and actions.

14.4 With the exception of claims based on malice, any claims of the Licensee under sections 14.1 and 14.3 shall become statute-barred within twelve (12) months of delivery of the Software.

15. MISCELLANEOUS.

15.1 THIRD PARTY SOFTWARE. The Software may be accompanied by or contain certain third party software, including open source software (collectively, "Third Party Software"), for which FEV is required to pass-through to its Licensees certain additional terms and conditions and/or notices. Such required Third Party Software terms and conditions and/or notices are published on a regular base by FEV. The Licensee agrees to be bound by and comply with the applicable Third Party Software terms and conditions, if any. THIRD PARTY SOFTWARE IS PROVIDED "AS-IS", WITHOUT WARRANTIES OR LIABILITY OF ANY KIND BY FEV.

15.2 ASSIGNMENT AND TRANSFER. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. However, the Licensee may not assign or transfer, by operation of law or otherwise, this Agreement (or any of the licenses or other rights or obligations hereunder), without FEV's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. FEV may subcontract a service, or any part of it, to subcontractors selected by FEV, provided that FEV will remain responsible to the Licensee for such subcontractor's performance in accordance with this Agreement.

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- 15.3 GOVERNING LAW AND DISPUTE RESOLUTION. This Agreement shall be construed and disputes hereunder shall be settled under the laws of the Federal Republic of Germany to the exclusion of the rules of private international law. FEV and the Licensee agree to submit to the exclusive jurisdiction of, and venue in, the courts of Regional Court of Aachen, Germany, in any dispute arising out of or relating to this Agreement. The U. N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- 15.4 FORCE MAJEURE. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, terrorist acts, insurrections, civil disturbance, fire, flood, earthquake, acts or defaults of common carriers, and/or any other cause, contingency or circumstance beyond the reasonable control of the party whose performance is affected. The affected party will resume full performance of interrupted obligations as soon as practicable upon cessation of intervening causes.
- 15.5 ENTIRE AGREEMENT. This Agreement including the Schedule and any amendment to this Agreement constitute the entire agreement of the parties and supersedes all prior or contemporaneous communications, understandings and agreements relating to the subject matter hereof, whether oral or written.
- 15.6 AMENDMENT. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of Licensor and Licensee.
- 15.7 SEVERABILITY. To the extent the terms of any FEV policies or programs for support services conflict with the terms of this Agreement, the terms of this Agreement shall control. If any provision or provisions of this Agreement shall be held to be void, invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties further agree to substitute a valid provision for the invalid provision which most closely approximates the intent and economic effect of the invalid provision.
- 15.8 WAIVER OF CONTRACTUAL RIGHT. Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.
- 15.9 NOTICES. All notices given pursuant to this Agreement shall be in writing and may be hand delivered (including courier service), or shall be deemed received within five (5) days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by mail or hand delivery to the specified address. Notices shall be effective upon receipt. Either party may from time to time change its Notice Address by written notice to the other

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party.

If to Licensor:

Attn: Legal Department

FEV Software and Testing Solutions GmbH

Brehnaer Str. 3

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