

## End User License Agreement (“EULA”) – click-to-accept –

between QA Systems GmbH, Schwieberdinger Str. 56, 70435 Stuttgart, Germany

- hereinafter “QAS“ -

and any natural person or legal entity clicking to accept this EULA

- hereinafter “END USER“ -

- both of them “the PARTIES“ -

### Preamble

QAS was founded in 1996 and offers developers, software testers and quality managers both its own products, which are marketed worldwide, and suitable products from third parties whether for static or dynamic testing, requirements engineering, architectural analysis or software metrics (“PRODUCTS”).

For distribution of its PRODUCTS QAS either supplies its customers directly or through cooperating with independent entrepreneurs who distribute software products from various manufacturers in their own name and for their own account (“RESELLER”).

END USER is any legal entity or natural person who purchases from QAS directly or its RESELLER a license under any of the PRODUCTS.

This EULA forms an essential part of any purchase order or offer of PRODUCTS.

PRODUCTS will be accompanied by a license file. The license file denominates the purchased license type, the activation key for the PRODUCTS and further specifications (“LICENSE FILE”).

The PARTIES agree on this the following:

### § 1 Subject Matter of the EULA

1. Subject Matter of this EULA is the Right of Use (§ 2) for PRODUCTS denominated in any LICENSE FILE that END USER receives from QAS or RESELLER including the corresponding user documentation (“SOFTWARE”).
2. SOFTWARE and its composition are completely and solely specified in the corresponding LICENSE FILE. The specifications in the LICENSE FILE have the sole purpose to describe the SOFTWARE and do absolutely not constitute any kind of guarantee or warranty. Guarantees and warranties have to be explicitly be marked as such. The LICENSE FILE also contains the requirements and specifications of the hardware and software environment (“PLATFORM”) in which SOFTWARE is to be operated. Alternatively SOFTWARE can be operated on a PLATFORM for which SOFTWARE has successfully passed and completed the deployment test contained in SOFTWARE or available from QAS (“AUTHORIZED PLATFORM”).
3. END USER receives the SOFTWARE either on an appropriate portable data storage device or by download via a corresponding link supplied by QAS or RESELLER.
4. QAS or its RESELLER do not provide installation services, maintenance or support under this EULA. END USER can agree with QAS or its RESELLER on an independent installation service and maintenance and support agreement subject to additional remuneration.
5. END USER shall use the SOFTWARE only in accordance with the terms and conditions of this EULA.

### § 2 Rights of Use

1. Subject to the terms and conditions of this EULA, QAS hereby grants END USER a temporary, non-exclusive, revocable, paid-up, non-assignable, non-sub licensable and limited right to use the SOFTWARE.
2. The use of the SOFTWARE includes installation of the SOFTWARE, loading of the SOFTWARE into the temporary memory as well as running and operating the SOFTWARE by an END USER (“USE”).
3. END USER may only make simultaneous USE of the SOFTWARE up to the number of licenses specified in the corresponding LICENSE FILE.
4. A license designated in the LICENSE FILE as “Node Locked” is a license to install and USE SOFTWARE on a single computer unit only at an END USER location. The number of licenses specified for a license designated as “Node Locked” will be one.
5. A license designated in the LICENSE FILE as “Floating” is a license to install and USE SOFTWARE on computer network only at an END USER location.
6. END USER shall not have the right to rent, sell, sub-license or otherwise make the SOFTWARE available to third parties.
7. The SOFTWARE may only be used by END USER pursuant to this EULA. Any generalization, assignment or transfer of any or all of the rights granted under this EULA are strictly forbidden and void.
8. END USER may not decompile, analyze, reverse engineer, determine the source code for or otherwise manipulate the SOFTWARE, except for configuring the SOFTWARE using its END USER changeable settings.
9. END USER shall not have the right to make a copy of the SOFTWARE for recovery purposes. END USER will be provided with a download link for recovery purposes only.
10. In case END USER’s USE of the SOFTWARE exceeds that granted and denominated in the LICENSE FILE, END USER will without undue delay purchase the according number of licenses or extension of the scope of its Rights of Use.
11. Any copyright signs, trademarks, serial numbers or any other form of identifying the SOFTWARE shall not be removed nor altered.
12. QAS offers six different license types:
  - PERMANENT (sec. 4.1)
  - ACADEMIC (sec. 4.2)

- SUBSCRIPTION (sec. 4.3)
- TEMPORARY (sec. 4.4)
- EVALUATION (sec. 4.5)
- BETA (sec. 4.6)

The license type purchased by END USER is specified in the LICENSE FILE. The various license types might limit or extend the Rights of Use pursuant to § 2 of this EULA.

The LICENSE FILE may contain additional regulations as well as special Terms and Conditions that prevail over those of the above listed license types and the Rights of Use pursuant to § 2 of this EULA.

### **§ 3 Term**

QAS grants to END USER the Rights of Use pursuant to this EULA for a period of time starting with the END USER receiving the delivery of the SOFTWARE. In case the SOFTWARE is delivered by download the period of time starts with the complete and successful download of the SOFTWARE (“START”). The period of time ends according to the license types: PERMANENT, ACADEMIC, SUBSCRIPTION, BETA, EVALUATION AND TEMPORARY (“TERM”). QAS reserves the right to automatically or remotely disable use of or access to the SOFTWARE should the duration or scope of the applicable license type be exceeded by END USER and END USER specifically consents to access of and communication with its computers and systems by QAS for such limited purposes.

### **§ 4 License Types**

The following license types and their regulations may be amended, restricted or otherwise modified contrary to the following as set out in sec. 2.12 of this EULA.

#### **1. PERMANENT**

- a) The TERM under the license type PERMANENT is an unlimited period.
- b) Irrevocable

Different than laid out under sec. 2.1 the Rights of Use under the license type PERMANENT are granted irrevocably.

#### **2. ACADEMIC**

- a) The TERM under the license type ACADEMIC ends as specified in the LICENSE FILE.
- b) Purpose

Under the license type ACADEMIC the SOFTWARE must be used solely for either undergraduate or postgraduate teaching as part of a bona fide higher education course, and/or for postgraduate research, as determined by QAS in its sole discretion. The SOFTWARE may not be employed in any way in the fulfillment of commercial contracts with third party organizations, or in the production of intellectual property for commercial gain.

- c) Research

Under the license type ACADEMIC research work or papers which make direct reference to the SOFTWARE, RESELLER or QAS by name may not be published without their respective prior written consent. END USER will provide QAS with a copy of any research work (papers, reports or thesis) which result from direct use of the SOFTWARE.

- d) Rights of Use

Under the license type ACADEMIC, END USER may extend the USE of the SOFTWARE to a maximum of fifty (50) users for teaching purposes only, during sixty (60) days per calendar year.

#### **3. SUBSCRIPTION**

The TERM under the license type SUBSCRIPTION ends as specified in the LICENSE FILE.

#### **4. TEMPORARY**

- a) The TERM under the license type TEMPORARY ends as specified in the LICENSE FILE.
- b) Purpose

Under the license type TEMPORARY, a specific purpose might be linked to the license in the LICENSE FILE.

#### **5. EVALUATION**

- a) The TERM under the license type EVALUATION ends as specified in the LICENSE FILE.
- b) Purpose

The purpose under the license type EVALUATION is solely for END USER to test and familiarize himself with the SOFTWARE to determine whether or not a PERMANENT, TEMPORARY, SUBSCRIPTION or ACADEMIC license shall be purchased.

#### **6. BETA**

- a) The TERM under the license type BETA ends as specified in the LICENSE FILE.
- b) Composition and No Performance Guarantees

The SOFTWARE under the license type BETA is not approved for release and hence might still include flaws, defects and other undesired side effects. END USER is aware that USE of the SOFTWARE is at its own risk. The terms and conditions under § 5 of this EULA still apply.

- c) Information

In consideration of the early access to the features of the SOFTWARE under the license type BETA, and without any additional consideration, END USER shall promptly report to QAS any incorrect, unusual or missing functionality in the SOFTWARE and any improvements which END USER feels could be made to SOFTWARE. By informing QAS END USER shall not violate any third party right, legal regulations or confidentiality agreements that it might be subject to. END USER shall make reasonable efforts to obtain any approval necessary to provide QAS with the aforementioned information.

d) Development

END USER hereby grants QAS permission to use any information, ideas, suggestions, and/or reports END USER submitted to QAS in marketing or publicity materials associated with the SOFTWARE under the license type BETA and any final generally-released version developed from it. QAS will not use any such information in a way which identifies END USER or END USER's project without END USER's consent. To the extent that any such information, ideas, suggestions, and/or reports include any intellectual property rights of END USER, END USER hereby assigns and agrees to assign all rights in such intellectual property to QAS.

### § 5 Warranties and Liability Limitations

Each Party represents and warrants to the other that it has the right and legal ability to (a) enter into this EULA; (b) grant the rights and licenses herein granted; and (c) incur the obligations incurred herein.

THE WARRANTIES MADE IN THIS EULA ARE THE ONLY WARRANTIES MADE BY QAS TO END USER. THE FOREGOING ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESSED, IMPLIED OR ARISING THROUGH A COURSE OF DEALING, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, TITLE, MERCHANTABILITY AND NONINFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY QAS AND WAIVED BY END USER. EXCEPT AS EXPRESSLY PROVIDED HEREIN, QAS DOES NOT MAKE ANY WARRANTY AND END USER HEREBY WAIVES ANY AND ALL WARRANTIES AS TO THE PERFORMANCE OF OR RESULTS OBTAINED FROM USE OF THE SOFTWARE OR AS TO RELIABILITY OF THE SOFTWARE. QAS DOES NOT WARRANT THAT THE SOFTWARE WILL MEET END USER'S OR THE CUSTOMERS OF END USER'S BUSINESS REQUIREMENTS OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. QAS ASSUMES NO LIABILITY OR OBLIGATION OTHER THAN THOSE EXPRESSLY RECITED IN THIS EULA, INCLUDING, WITHOUT LIMITATION, ANY OBLIGATION OR LIABILITY FOR LOSS OF USE, REVENUE, OR PROFITS, LOSS OF DATA, OR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

QAS DOES NOT ACCEPT AND END USER HEREBY WAIVES ANY LIABILITY ON THE PART OF QAS UNDER OR IN RELATION TO THIS EULA OR ITS SUBJECT MATTER (WHETHER SUCH LIABILITY ARISES DUE TO INTENTIONAL CONDUCT, NEGLIGENCE, BREACH OF CONTRACT, MISREPRESENTATION OR FOR ANY OTHER REASON) FOR ANY:

- (A) LOSS OF PROFITS;
- (B) LOSS OF OR DAMAGE TO BUSINESS OR REPUTATION;
- (C) DAMAGES FOR NOT AMORTIZED EXPENSES AND/OR INVESTMENTS;
- (D) CLAIM FOR COMPENSATION FOR LOSS OF CLIENTELE;
- (E) LOSS OF, OR LOSS OF USE OF, THE SOFTWARE OR ANY SOFTWARE OR DATA; OR
- (F) ANY OTHER INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE.

FOR THE PURPOSES OF THIS CLAUSE THE TERM "LOSS" INCLUDES A PARTIAL LOSS OR REDUCTION IN VALUE AS WELL AS A COMPLETE OR TOTAL LOSS.

Notwithstanding the foregoing disclaimers and limitations, QAS' total liability arising from or in connection with this EULA and in relation to anything which the party concerned may have done or not done in connection with this EULA (and whether the liability arises because of a breach of contract, negligence or for any other reason) shall be limited to an amount equal to the total amount paid or payable by END USER for its license under the SOFTWARE during the twelve (12) month period preceding the date of the claim giving rise to such liability.

### § 6 Confidentiality

1. END USER is required to protect the SOFTWARE, LICENSE FILE, any registration keys, serial numbers, access data for downloads and all other information corresponding to the SOFTWARE from unauthorized access.
2. Any information in regard to the SOFTWARE that END USER obtains from QAS or any other source is deemed to be of confidential nature ("CONFIDENTIAL INFORMATION").
3. END USER shall not disclose, publish or otherwise make available to any third party CONFIDENTIAL INFORMATION.
4. An exception to 6.3 applies where such CONFIDENTIAL INFORMATION:
  - was known to END USER before entering into the EULA, without restriction as to its use or disclosure;
  - is obtained from a third party if no confidentiality agreements, legal regulations or public orders have been violated;
  - is generally known or of public nature as long as this is not the result of violation of confidentiality agreements, legal regulations or public orders or
  - is divulged pursuant to any legal proceeding or otherwise required by law, subject to END USER giving all reasonable prior notice to QAS to allow it to seek protective or other court orders and provided that END USER uses best efforts to make such disclosure under conditions of confidentiality.
5. END USER will only grant access to CONFIDENTIAL INFORMATION to consultants that are by law or by prior confidentiality agreements bound to confidentiality. END USER will only grant access to CONFIDENTIAL INFORMATION to employees that need the CONFIDENTIAL INFORMATION in regard to the purpose of this EULA and the SOFTWARE and only to the extent necessary.

END USER will oblige those employees to confidentiality to the extent legally possible during as well as after their employment.

6. In case of a permitted sale of the SOFTWARE to a third party END USER shall continue to not disclose CONFIDENTIAL INFORMATION to any third party other than the purchaser of the SOFTWARE.

#### **§ 7 Right to Audit**

1. END USER shall allow QAS upon its request to verify that the USE of the SOFTWARE by END USER has been in accordance with this EULA. This involves especially, but is not limited to, checking that the actual USE of the SOFTWARE corresponds to the number of licenses acquired by END USER and the scope of the Rights of Use.
2. For this purpose END USER shall inform QAS extensively and allow QAS to view all relevant data and documents. END USER shall also provide a review of the hardware and software environment the SOFTWARE is being operated on.
3. QAS may audit during the regular business hours of END USER and may use third parties that are obliged to confidentiality.
4. QAS shall see to it that there is minimum interruption to END USER's course of business.

#### **§ 8 Obligations**

1. Upon termination or expiration of the TERM END USER shall permanently destroy and delete any copies and installations of the SOFTWARE in its possession and stop all activities involving the SOFTWARE and its USE.
2. Failure or neglect by QAS to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of QAS' rights hereunder nor in any way affect the validity of the whole or any part of this EULA nor limit QAS' rights to take subsequent action.

#### **§ 9 Non-compliance**

In case of rectifiable non-compliance by END USER with the terms of this EULA, QAS shall be entitled to issue a cease-and-desist letter with a minimum deadline of five working days to rectify the non-compliance.

#### **§ 10 Liquidated Damages**

For each case of non-rectified or non-rectifiable non-compliance of this EULA by END USER, END USER shall pay to QAS liquidated damages that amount to the higher of (a) the license fee paid by END USER for the PRODUCT or (b) the retail licensee fee applicable to END USER's actual use of the PRODUCT in excess of its permitted use under the license type purchased by END USER. These liquidated damages are designed to approximate the damages incurred by QAS as a result of a breach and are independent from any other rights or claims that QAS might have under this EULA or applicable law.

#### **§ 11 Various**

1. END USER may only assign or transfer its rights and claims under this agreement against QAS after prior written approval by QAS.
2. END USER may only offset with a claim that is unchallenged or legally binding by final verdict.
3. Terms and conditions of END USER are deemed to be void.
4. Modifications to this EULA require prior written approval by the PARTIES. The same applies to the requirement of written approval by the PARTIES itself.
5. In case any clause of this EULA shall be invalid or partially invalid this shall not invalidate or affect the whole and the rest of the EULA. The PARTIES agree to find a valid clause that will reflect the closest the intentions of the PARTIES upon signing this EULA, but if no such modification is found, this EULA shall be interpreted as without the invalidated clause. The same applies to defects of this EULA that might be found.
6. QAS shall have the right to assign or transfer its rights, obligations, claims or this EULA to any third party.
7. This EULA, including its Annexes and corresponding LICENSE FILES, constitutes the entire agreement between the PARTIES with regard to the Subject Matter of the EULA and shall replace any prior or contemporaneous understanding or agreement between the PARTIES with regard to the same Subject Matter of the EULA. The PARTIES further agree that agreements stipulating a required written form for changes or modifications are included under this clause. In case the form of this EULA shall not meet the requirements of a stipulated required written form of any agreements in force between the PARTIES in regard to the Subject Matter of the EULA at the time of coming into force of this EULA the PARTIES stipulate that the required written form of those agreements shall be canceled in order for those agreements to be replaced by this EULA as well.

#### **§ 12 Jurisdiction, Applicable Law, and Dispute Resolution**

This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the State of Illinois, United States of America, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. All disputes, controversies, or claims between the Parties arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be finally determined under the Rules of Arbitration of the International Chamber of Commerce ("ICC") by a single arbitrator appointed in accordance with said Rules. Any such arbitration shall be conducted in Stuttgart, Germany, in the English language. Judgment on any award entered in such arbitration may be entered in any court having jurisdiction over the parties. This clause shall not preclude parties from seeking provisional or interim remedies from or pursuing a tort or other claim not related to the Agreement in a court of appropriate jurisdiction, e.g., a copyright infringement claim brought by QAS against END USER.

(Version: June 2013)