IUCLID 6

Software evaluation agreement

9/6/2015

By accepting this software evaluation agreement (hereinafter the "Agreement"), the Evaluator agrees to be bound by all the terms and conditions of it. ECHA is willing to provide the Software to the Evaluator only under the condition that the Evaluator accepts all the terms and conditions contained in this Evaluation Agreement.

The Evaluator acknowledges all intellectual property rights including, but not limited to, the copyright vested in ECHA with reference to the Software and hereby declares that it wishes to obtain copy of the evaluation version of the Software for the purposes defined in this Agreement.

PREAMBLE

Pursuant to Article 111 of Regulation (EC) No 1907/2006 (the REACH Regulation) IUCLID shall be the format of a registration dossier to be submitted in accordance with the provisions of the REACH Regulation.

Following the roll-out of the IUCLID 5 application, the IUCLID project implements a series of plug-ins to be installed on top of the IUCLID 5 application and develops Service Releases of the application. The IUCLID project also develops test versions of IUCLID 6.

This Evaluation Agreement covers:

> The IUCLID 6 beta version, in Server and Desktop distributions, and its related applications (e.g. web services) or plug-ins (e.g. Help System),

> (hereinafter the "Software").

The Software must be tested before its official release. The Evaluator has agreed to participate in this testing effort. The use of the Software in this testing effort by the Evaluator is governed by this Agreement.

The Parties have agreed as follows:

1. DEFINITIONS

"Software" shall mean the evaluation version of the software(s) in the above chapter, and related materials contained in the package. Software shall include also any update of the evaluation version.

"Derivative Works" shall mean any changes in the Source code of a noticeable and measurable degree.

"Use" or "Used" in connection with the Software, as defined below, means storing any portion of the Software in a machine, and/or transmitting any portion of the Software to a machine for processing and/or compiling, executing or interpreting any machine instructions contained in the Software, and/or displaying any portion of the Software in connection with the processing of such machine instructions.

"Evaluator" shall mean the Evaluator together with its Affiliates.

"Affiliate" shall mean a member of the evaluation group of the Software.

"Parties" shall mean both parties of this Agreement - the Provider and the Evaluator - as identified on above.

2.   RIGHTS GRANTED

ECHA grants the Evaluator a personal, non-exclusive, non-transferable and royalty-free license to use the Software exclusively for evaluating and testing the Software.

Evaluator may:

a. Use the Software "as is" for evaluation and test purposes
    1. Either on a standalone[1] workstation
    2. Or in a distributed installation[2]

b. Make only one copy of the whole Software, in machine readable form for back-up and archival purpose only, provided that Evaluator reproduces all the proprietary notices on each copy which appear on or in the Software. This copy must be kept in the Evaluator's control and possession. The Evaluator shall use its best efforts to ensure that the Software does not fall into the hands of third parties whether as a result of theft or otherwise;

c. Demonstrate the Software, provided people that are shown the Software agree to and comply with the confidentiality clause contained at Article 10 of this Agreement.

The Evaluator shall not itself or allow any third party to:

a. Use the Software for any kind of production purposes; attempt to use data captured, collected, stored and/or exported with the Software to fulfil the obligations under REACH or any other local, national or international legislation or obligation - current, past or future.

b. Derive profits from the use of the Software;

c. Transfer or grant any kind of rights regarding the Software or any portions thereof in any form to any third party, without ECHA's prior written consent;

d. Modify, translate, reverse engineer, decompile, disassemble, create Derivative Works based on, or copy the Software or any part of the Software, except otherwise mentioned by the legislative measures in force or with the prior written consent of ECHA; in the event that the Evaluator does not comply with the above clause and creates Derivative Works, those works will be considered as the ECHA's property. ECHA can therefore claim and obtain that ownership on the basis of the present agreement.

e. Remove or alter any Software identification, proprietary notices, labels or trademarks which appear on or in the Software.

f. Disclose the results of any benchmark test on the Software to any third party without ECHA's prior written consent.

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[1] i.e. on a PC that is not connected to a network and, therefore, cannot share IUCLID (and other) files with another PC and does not rely on other components or parts of a system.
[2] i.e. dispersed over multiple computers and not centralized at a single location; in the IUCLID context this means that the client software and the DB software can be located at different machines, connected through a network; more than one workstation installation can be connected to the same IUCLID DB instance.

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g. Make publications or presentations of any kind in relation with the Software or its performances.

h. Use the back-up and archival copy (or allow anyone else to use such copy) for any purpose other than to replace the original copy in the event it is destroyed or becomes defective.

ECHA shall have no obligation for installation, support and maintenance of the Software.

The Software may include one or more libraries, files or other items, for which ECHA grants the Evaluator a right of use to the extent ECHA is empowered by the licenses granted by the respective owners of such libraries, files or items and subject to the scope and limitations therein.

3.   OWNERSHIP

The Software is not sold to the Evaluator who shall not acquire any right, title or interest (including without limitation copyright or other right in the nature of copyright or any other intellectual property right whatsoever) in the Software, which shall remain the sole property of the Provider.

The Evaluator's rights to use the Software are specified in this Agreement, and ECHA retains all rights not expressly granted to the Evaluator in this Agreement.

4.   ERROR DETECTIONS, IMPROVEMENTS AND CHANGES

The Evaluator shall without any delay notify in written form ECHA of any error, bug, defects or malfunction of the Software.

The Evaluator shall submit to ECHA any suggestion for improvement and further development of the Software. ECHA may refuse to comply with this suggestion into the Software without having to explain this refusal.

5.   BREACH(ES) TO ECHA RIGHTS

The Evaluator shall promptly notify ECHA if the Evaluator becomes aware of:

a. any unauthorized copy(ies) of the Software or the Derivative Work(s)

b. any unauthorized use of the Software or the Derivative Work(s)

c. any actual, threatened or suspected infringement of any intellectual property of ECHA in the Software or the Derivative Work(s) which comes to the Evaluator's notice

Notification shall be in writing and be made within 30 days of the Evaluator becoming aware of such act described above.

6.   LIMITED WARRANTY AND LIABILITY

The Software is provided "as is" without any warranty except as provided stated below. In its evaluation version, the Software is known to have certain limitations. ECHA does not warrant that the functions contained in the Software will meet the Evaluator's requirements or that the operation will be uninterrupted or error free. The entire risk as to the use, quality, and performance of the Software is

with the Evaluator. Should the Software prove defective, the Evaluator, and not ECHA, assumes the entire cost of any necessary repair. In no event, ECHA will be liable for any incidental, consequential, direct or indirect damages including but not limited to the loss of data, lost of profits, or any other financial loss arising from the Use of the Software even if ECHA have been notified of the possibility of such damages.

ECHA represents in favor of the Evaluator that:

   a.   it has the capacity to bind itself pursuant to this Agreement;

   b.   its intellectual Property Rights, Titles and Interests are neither in whole nor in part being contested by any third party at the time of signing this Agreement;

Subject to the limitations provided in Article 2, last paragraph, concerning third party proprietary libraries, files or other items included with the Software, ECHA also represents that it is the legitimate owner of the Software and the Intellectual Property, Titles and Interests therein. However, for the avoidance of doubts, no warranty against infringement of third parties property rights, of merchantability and fitness for a particular purpose is hereby provided by ECHA.

The provisions of this Article shall survive in full force and effect the termination of this Agreement occurred for whatever reason.

7.   POSSIBLE BREACH OF THIRD PARTIES RIGHTS

In case the Evaluator receives claims for infringement from third parties, the Evaluator shall inform immediately ECHA. ECHA may at its own discretion undertake any useful change to the Software in order to deliver data free from any third parties rights. In case this is not possible, the availability of the Software will be stopped.

In the event of any claim, suit or proceeding for infringement from third parties, ECHA shall have the right, at its option, to assume defence of such action.

8.   VERIFICATION OF COMPLIANCE

The Evaluator agrees that authorised representatives of ECHA with little or no advance notice may verify that the Evaluator is complying with its obligations under this agreement by any means.

9.   INTELLECTUAL PROPERTY

The rights concerning the Software are the property of ECHA and are protected as such by national copyright laws, international treaty provisions, and applicable laws of the country in which they are being used. Trademarks, logos and trade names quoted on or in the Software are the property of their respective owners. Any reproduction of the Software is only granted on the absolute condition that it contains all the legal specifications of the Software's ownership.

10.   CONFIDENTIALITY

The structure, the organisation, the performances of the Software and any information clearly identified as confidential by ECHA, are valuable trade secrets and confidential information of the ECHA. The Evaluator agrees to hold these trade secrets in confidence.

Each Party shall keep confidential the information received from the other Party under this Agreement and not to disclose the other Party's information to third parties, to use it for the contractually specified purposes exclusively, to refrain from exploiting the other Party's information either directly or indirectly, in a way that is or may be detrimental to the other Party and to take all necessary precautions to ensure the confidentiality of the information.

Information shall mean, among other, technical information, financial data, business plans, personal information, drawings, samples, devices, and other data.

Confidentiality obligation means in particular, but not exclusively, that, notwithstanding the provisions of this agreement:

a. no information shall be passed on to third parties, unless prior consent in writing;

b. no unauthorized third Party may gain knowledge of the Software, the Software specifications, elements, requirements while evaluation and testing are being performed;

c. any parts, elements and components of the Software and of the Derivative Work(s) shall be kept in the Evaluator's custody and placed in closed boxes, safes or recipients while they are not being worked on, or they shall be placed in an enclosed room that cannot be viewed by unauthorized persons;

d. the Evaluator shall immediately notify the ECHA in writing of any incidents with relevance to confidentiality, in particular any contacts with journalists, photo-graphers or other persons concerning the Software and/or elements, parts or Derivative Work(s);

e. necessary precautions are taken whenever data is processed, stored and/or on or through IT equipment to prevent third-party access to such data;

f. the use of network links and access to resources may only be permitted for conducting the evaluation and testing work according to the Agreement's contractual undertakings;

g. access at the rooms that have been assigned for conducting the evaluation and testing work is only granted to persons dedicated to conduct the work being under confidentiality requirements.

h. a ban on audio and video recordings (photo, film, video and magnetic and optical video storage devices) is in place throughout the business and operating premises dedicated to conduct the work being under confidentiality requirements; no recording devices may be taken to these places. Any exceptions to this rule are subject to written permission from ECHA.

The Evaluator undertakes not to use information/data derived from Software and information/data received from ECHA in relation with the Software for any other purpose than for evaluating and testing the Software. In particular, Evaluator agrees not to use such information/data in intellectual property right applications or integrate such information/data in any work of the Evaluator or any third parties without a written authorization of ECHA.

These Confidentiality obligations shall not apply to information for which each Party is able to prove, in every single case, that:

a. it was as such in the public domain at the time of its disclosure by ECHA to the Evaluator;

b. it has entered as such the public domain through no fault of Evaluator subsequent to its disclosure by ECHA to the Evaluator;

c. it was as such in possession of the Evaluator free of any obligation of confidence at the time its disclosure by ECHA to the Evaluator;

d. it has been rightfully communicated as such to the Evaluator free of any obligation of confidence subsequent to the time of any obligation of confidence at the time its disclosure by ECHA to Evaluator.

For the purpose of this Agreement, disclosures made to the Evaluator under this Agreement which are specific to the Software shall not be deemed to be within the exceptions set forth above merely because they are embraced by general disclosures in the public domain or in the possession of the Evaluator or received from a third party. In addition, any combination of features shall not be deemed to be within the foregoing exceptions merely because the individual features are in the public domain or in the possession of the Evaluator or received from a third party, unless the combination itself and its principles or operations are in the public domain or in the possession of the Evaluator or received from a third party.

In any event, the obligations of the above sections shall terminate with respect to any information/data relating to the Software ten (10) years after its disclosure by ECHA to Evaluator.

11. EMPLOYEES, OTHER AGENTS, SUBCONTRACTORS

Each Party warrants that all its employees, agents and/or subcontractors having access to the Software, elements of the Software or of the Derivative Work(s) will be subject to the commitment to fulfil the obligations hereunder and to observe the provisions specified in the present agreement.

The Evaluator warrants that – by means of appropriate written agreements with its employees, agents and/or subcontractors– such persons will be bound to observe the obligations of this agreement as binding upon themselves and/or that they are committed to the same level of confidentiality under their respective agreements of service or employment.

12. TERM & TERMINATION

This agreement is effective from the date of acceptance of the agreement by both parties (the "Effective Date") and shall remain in effect for a period of 12 months as from the Effective Date. Each Party may terminate this agreement at any time without cause upon written notice.

The Agreement shall automatically terminate at ECHA's sole discretion if the Evaluator is in breach of this Agreement. This termination shall not prevent the ECHA from claiming any further damages. Upon termination, for any reason, the Evaluator shall destroy or return the Software to ECHA, as well as any total or partial copy in its possession. Upon termination for any reason, the Evaluator shall certify by means of a written document duly signed by a legal representative that the provisions of the present article have been respected, and this within a time limit of eight (8) days as from the date of termination.

This termination shall not relieve the Evaluator from its liability to respect all the obligations claimable before the termination date. In particular the provisions of the dispositions relating to the Protection and Security of Software, the Disclaimer of Warranty, the Indemnification and Limitations of Liabilities and the Confidentiality shall remain in full force and effect following the termination of this Agreement.

13. MISCELLANEOUS PROVISIONS

This Agreement shall be governed by and construed in accordance with Finnish law. Any dispute, controversy or claim arising out of or relating to this Agreement shall be settled before the competent courts of Helsinki.

Evaluator shall not directly or indirectly transfer the Software to any country to which such transfer would be prohibited by any applicable export control laws.

This is the entire agreement between ECHA and the Evaluator relating to the contents of the Software and supersedes any other communications with respect to the Software. No change or modification to this Agreement will be valid unless it is in writing and is signed by a duly authorized representative of each Party. This Agreement cancels all previous agreements and statements, verbal or written, regarding any dealings between the parties with respect to the subject matter hereof.

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall continue in full force and effect.

The waiver by ECHA of one breach or default hereunder shall not constitute the waiver of any subsequent breach or default.

The relationship between ECHA and the Evaluator is that of Provider/Evaluator. In all matters regarding to the present Agreement, the Evaluator shall act as an independent contractor.

Any notice or other document required to be served under this Agreement must be served in writing and may be delivered by hand or sent by certified mail with acknowledgement of receipt to the parties to be served at the address appearing in this Agreement, with a courtesy copy addressed to the representative of the Parties. These notices shall have effect on delivery (if delivery by hand) or on the date of the acknowledgement of receipt (if sent by certified mail).

The headings given sections of this Agreement are solely for convenience or reference, and shall not be construed as having any bearing upon the interpretation or meaning of the provisions of this Agreement.

The signatory to this Agreement warrants that he or she has the authority to execute this instrument on behalf of the Evaluator, that the Agreement has been approved by all applicable corporate procedures and agrees to defend and hold harmless ECHA from any claim that he or she was not fully authorised to execute this Agreement on behalf of the principal for whom he or she signed this Agreement.

THE EVALUATOR ACKNOWLEDGES TO HAVE READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE ABOVE-MENTIONED TERMS AND CONDITIONS OF THE CONTRACT.

LICENSEE ACKNOWLEDGES TO HAVE READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT INDICATED ABOVE.