General Terms and Conditions of ITEMIS AG for YAKINDU Statechart Tools Academic Licence

itemis AG

Version 1.0.0, 25.04.2017

1. **Applicability of the contractual conditions**

   a. These General Terms and Conditions (hereinafter: ***"GTC"***) shall exclusively apply to the provision of proprietary software products of ITEMIS AG, Brambusch 15 - 24, D-44536 Luenen, Germany, for academic software license in the version retrievable for placing orders under legal.itemis.com/revisions/products/1.0.0/, provided that nothing otherwise is stipulated. Other contractual conditions shall not become substance of the contract, even if ITEMIS AG does not expressly object to them. Such shall also apply if, upon entering into similar contracts, no reference thereto is made.

   b. These GTC shall not apply to any ITEMIS AG open-source products.

2. **Purpose of the contract**

   a. The purpose of these GTC shall be the delivery of standard software and its related preparation for an academic use, and the granting of usage rights contemplated under Clause 4.

   b. Services of another nature (e.g., software maintenance, setting up and installing software, training, etc.) shall not be the purpose of these GTC and shall be described in separate GTC of ITEMIS AG as necessary.

3. **Services**

   a. ITEMIS AG shall make the software products available to the person and/or party placing the order (the ***"PPO"***) for a usage period of twelve months if the person can prove that he/she will only use it within an academic environment (e.g. matriculation certificate, university mail address etc.). The PPO shall initially obtain a fully functional version of the software product for a test period of thirty (30) days at no charge. After the acceptance of these GTC by the person and a successful check regarding the academic use, the person will receive a file to renew the period of use for twelve months. No hand-over by data carriers shall be owed.

   b. The PPO shall have no claim to hand-over the source program.

   c. The product description retrievable at the time of ordering at YAKINDU Products (www.yakindu.de) shall be decisive for the scope, for the type, and for the quality of the services. Subsequent changes to the scope of the service shall require written agreement or written confirmation by ITEMIS AG.

   d. Product descriptions and depictions in test programs are specifications; however, they shall not be guarantees.

   e. In each instance, ITEMIS AG shall render all services in keeping with proven state-of-the-art technology.

4. **Rights of the PPO in the software**

   a. The software (program and user handbook) is legally protected. Provided that nothing to the contrary is expressly mentioned, ITEMIS AG shall have the right, in the relationship of the contracting partners, to copyrights, patent rights, trademark rights, and all other service intellectual property rights in the software and in other objects which ITEMIS AG hands over to or makes accessible to the PPO.

   b. ITEMIS AG shall use each third-party software product within the parameters listed below. Furthermore all proprietary software products of ITEMIS AG make use of the third-party

software product *eclipse.org*. Third-party software products shall be made available "as is" without any guarantees extending beyond the guarantee provided by law.

Third-party Software

YAKINDU Traceability

Apache FOP/POI, Artop, DOM4J, XMP Core, JNA, (github).com4j, Xstream, Saxon-HE

YAKINDU ModelViewer

JNA

YAKINDU EA-Bridge

JNA, (github).com4j, HXTT, jTDS Treiber

For the third-party software components mentioned here, deviating licensing conditions shall apply. The details for this purpose are itemized in the present document in an Appendix.

c. Apart therefrom, the PPO shall acquire usage rights in the software in order to use it for twelve months in an academic environment for its own purposes. Such shall include the authorization to copy the programs on random access memory and on hard drives, and to create the back-up copies of the programs necessary for such a secure operation. The PPO shall not be allowed a usage of the software extending beyond the rights granted below.

d. It shall be permitted to copy the user handbook and other documents handed over by ITEMIS AG solely for internal academic purposes, if these documents were handed over to the PPO not as downloads but rather in printed form.

e. The forwarding of the software (in whole or in part) to a third party is forbidden.

f. The PPO shall have only a provisional, revocable usage right. ITEMIS AG shall, in particular, revoke this provisional usage right if the PPO does not use the software within an academic environment. In this event, ITEMIS AG shall be able to demand from the PPO the return of the objects handed over or the written assurance that they are destroyed, in addition to the deletion or destruction of all copies and the written assurance that such has taken place.

g. All other exploitation activities, including, but not limited to, leasing, renting out, and dissemination in physical or non-physical form, are forbidden.

h. Contractual objects, documents, suggestions, test programs, and so forth belonging to ITEMIS AG, which are made accessible to the PPO before or after entering into the contract, shall be considered - if not freely accessible - as business and operational secrets of ITEMIS AG and shall be kept confidential pursuant.

5. **PPO's duties to cooperate**

a. Prior to entering into the contract, the PPO shall have reviewed that the specifications of the software meet its wishes and requirements. The essential functionality characteristics and conditions of the software are known to the PPO.

b. The PPO shall implement appropriate precautions for the event that the program, in whole or in part, does not properly function (e.g., by backing up data, by disruption diagnosis, and by reviewing results regularly). The PPO shall be responsible for ensuring operation of the

work environment.

    c. The PPO shall support ITEMIS AG in eliminating defects, by specifically describing the problems occurring, by comprehensively informing ITEMIS AG, and by granting ITEMIS AG the time and opportunity necessary to eliminate the defects.

6. **Material and title defects**

    a. The software shall have the stipulated quality, shall be suitable for usual use, and shall have the usual qualities of software of this type; however, it shall not be error-free. The qualities represented in the respective product description shall be deemed stipulated. A functional impairment of the software which results from hardware defects, environmental circumstances, operator error, or the like, shall not constitute a defect. A negligible deviation in qualities shall not be taken into consideration.

    b. In the event of material defects, ITEMIS AG shall initially be able to render subsequent performance. Subsequent performance shall take place at the discretion of ITEMIS AG (i) by means of eliminating the defect, (ii) by delivering a program which does not evince the defect, or (iii) by demonstrating possibilities for avoiding the effects of the defect. The PPO is to take on a new version of the program or the previous version of the program which did not contain the defect, if such is reasonable for the PPO.

    c. ITEMIS AG shall be able to demand reimbursement for its work expenses occasioned by the PPO complaints of defect, to the extent that the PPO is not in the position to demonstrate proof of any defect and has ascertained the defects with the least amount of negligence.

    d. ITEMIS AG shall guarantee that the usage of the software by the PPO pursuant to the contract shall not be opposed to any third-party rights. In the event of defects in title, ITEMIS AG shall guarantee that, at its discretion, it shall provide the PPO a legally unobjectionable opportunity to usage in the software or software of equivalent value.

    e. The PPO shall instruct ITEMIS AG in writing and without undue delay in the event that a third party enforcing intellectual property rights (e.g., copyrights or patent rights) against it. The PPO shall authorize ITEMIS AG to pursue the dispute alone against the third party. If ITEMIS AG makes use of this authorization, the PPO shall not be able to acknowledge the third-party claims itself without the consent of ITEMIS AG. ITEMIS AG shall defend against the claims of the third party at its own expense and shall release the PPO from all costs associated with the defense of these claims, provided that these are not based upon duty-breaching conduct of the PPO (e.g., duty-breaching usage of the programs).

7. **Liability**

    a. ITEMIS AG shall tender compensatory damage payments or reimbursement of unavailing expenditures, regardless of legal grounds (e.g., for debt or similar obligations based in commercial law, for breach of duty, and for tortious acts), only to the following extent.

        i. ITEMIS AG shall have unlimited liability for malice or gross negligence, for injury to life, body, or health, in accordance with the provisions of the German *Produkthaftungsgesetz* (the Products Liability Act) and to the extent of any guarantee assumed by ITEMIS AG.

        ii. The liability of ITEMIS AG shall be limited to a maximum of EUR 200,000.00 per damage event, totaling EUR 400,000.00 for all of the client's damage events.

        iii. ITEMIS AG shall have no further liability.

    b. The limitation of liability shall also apply to the personal liability of employees,

representatives, organs, and vicarious agents of ITEMIS AG.

    c. Objections based on contributory negligence shall remain available to ITEMIS AG.

8. **Audit right**

    a. The PPO shall enable ITEMIS AG to review upon demand whether the PPO is qualitatively and quantitatively using the program within the academic purpose of the licenses it has acquired. For this purpose, the PPO (i) shall provide ITEMIS AG with information, (ii) shall guarantee access by ITEMIS AG to view relevant documents and files, and (iii) shall facilitate review by ITEMIS AG or by an auditor appointed by ITEMIS AG of the hardware and software environment employed.

9. **Data protection/data security**

The contracting partners shall observe the pertinent data protection regulations as provided by law. If and to the extent that ITEMIS AG, when rendering services, obtains access to personal data within the meaning of § 11 sentence 5 of the German *Bundesdatenschutzgesetz* (the Federal Data Protection Act, the "***BDSG***"), ITEMIS AG shall collect, process, or use these data only within the parameters of the instructions of the PPO as the "owner of the data". The PPO shall advise ITEMIS AG, without being requested to do so, if there exists, within the parameters of the remote access, any possibility of access to the personal data of customers, employees, or other concerned persons. For this purpose, it shall be possible to agree upon additional provisions as needed in the individual case, under a separate agreement in accordance with § 11 sentence 2 BDSG. Pursuant to § 5 BDSG, the contracting partners shall obligate their employees comply with data confidentiality.

10. **Arbitration proceedings**

The contracting partners agree to submit all differences of opinion arising from or in connection with this contract, or from enhancements to or restatements of this contract, which differences they cannot resolve between themselves, to the dispute resolution center of the *Deutsche Gesellschaft fuer Recht und Informatik* (the German Association of Law and Informatics, www.dgri.de), in order to settle the dispute provisionally or conclusively, in whole or in part, in accordance with the rules of arbitration as amended at the time of the initiation of the arbitration proceedings. The limitation period for all claims arising from the disputed matter shall be tolled from the time of the application for arbitration as of the end of the arbitration proceedings; § 203 of the German *Buergerliches Gesetzbuch* (the Civil Code) shall apply *mutatis mutandis*.

11. **Final provisions**

    a. The PPO shall be able to transfer to third parties any claims against ITEMIS AG based upon this contract only following written consent of ITEMIS AG.

    b. The PPO shall be able to offset or to withhold payment due to defects only insofar as it is actually entitled to claims for payment due to material or title defects in service. For other defect claims, the PPO shall be able to withhold payments only in a proportional partial amount, taking the defect into consideration. The PPO shall have no withholding right if its defect claim is time-barred. Apart therefrom, the PPO shall be able to offset or to withhold payment only for undisputed or legally ascertained claims.

    c. Amendments to and restatements of to these GTC shall require the written-form (

Schriftform). Such shall also apply to the amendment to or deletion of this clause. The written-form (*Schriftform*) shall be satisfied only by transmitting the signed original.

d. German law is to be applied to this contract, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (UN sales law).

e. The place of performance shall be the seat of ITEMIS AG. The sole venue shall also be the seat of ITEMIS AG, to the extent that the PPO is a merchant or a legal person under public law.

f. Should individual provisions of these GTC be ineffective, such shall not impair the effectiveness of the remaining provisions. In lieu of the ineffective provision, the contracting parties shall implement one which legally and financially is best attuned to the objective of the contract.

Appendix A: Third-party provider software and the applicable license conditions:

eclipse.org

Eclipse public license, Version 1.0 (www.eclipse.org/legal/epl-v10.html)

Apache FOP/POI

Apache license, Version 2.0 (www.apache.org/licenses/LICENSE-2.0)

Artop

Artop software license based on AUTOSAR released material (ASLR) (www.artop.org/|aslr.html)

DOM4J

dom4j license by MetaStuff (dom4j.sourceforge.net/dom4j-1.6.1/license.html)

XMP Core

BSD (www.adobe.com/devnet/xmp.html)

JNA

LGPL 2.1 (jtds.sourceforge.net/license.html)

(github).com4j

BSD/com4j license by Kohsuke Kawaguchi (github.com/kohsuke/com4j/blob/master/LICENSE.txt)

Xstream

BSD (xstream.codehaus.org/legal/epl-v10.html)

HXTT

HXTT software license (www.hxtt.com/license.html)

jTDS Treiber

LGPL 2.1 (jtds.sourceforge.net/license.html)

Saxon-HE

Mozilla Public License, Version 2.0 (www.mozilla.org/en-US/MPL/2.0/)