ClassiX Software Licence Terms

Clause 1 Subject of the contract

(1) The Purchaser shall acquire from the Seller a copy of the standard software "InstantView RAD Framework" of classix software-engineering UG (limited liability), and/or ClassiX application solutions of ClassiX Software GmbH (hereinafter in each case: "ClassiX Software") on the following licence terms. These Licence Terms shall apply only in relation to entrepreneurs as defined by Section 14 of the German Civil Code [*BGB*].

(2) If the Purchaser acquires ClassiX Software from ClassiX Software GmbH directly (hereinafter: ClassiX), ClassiX shall be regarded as the "Seller" for the purposes of these Licence Terms. If the Purchaser acquires ClassiX Software from a dealer or a sales partner of ClassiX, such party shall be regarded as the "Seller" for the purposes of these Licence Terms.

(3) ClassiX Software including the documentation shall be delivered to the Purchaser as follows: The RAD Framework shall be delivered to the Purchaser in object code and the ClassiX application solutions as a readable InstantView source code (known as "AppsWarehouse Modules") subject to the following terms of use. The instruction manual shall be provided to the Purchaser in electronic form.

(4) ClassiX Software has the functionality specified in the documentation. "Documentation" means the information accessible at www.appswarehouse.de and www.instantview.org for the licensed ClassiX Software at the time of acquisition.

Clause 2 Rights of use

(1) ClassiX Software is copyright protected. The Seller grants the Purchaser a simple (non-exclusive), permanent right to use ClassiX Software in order to operate it within its network. ClassiX Software may only be used simultaneously by the maximum number of natural persons specified in the purchase contract ("Users") for whom the Purchaser has paid the contractual remuneration.

(2) The Purchaser may use ClassiX Software only for its own purposes in order to execute the business processes of its company. If contractually agreed in writing, use of ClassiX Software is also permitted in the group companies of the Purchaser as defined by Section 15 of the German Stock Corporation Act [*AktG*] ("Group Companies"). The Purchaser is not entitled to communicate ClassiX Software to the public either by wire or wireless means or to hire out or lend or make ClassiX Software temporarily accessible to third parties in any other manner (particularly within the scope of application service providing or computer centre operations on behalf of third parties), unless ClassiX gave its prior written approval thereto.

(3) Reproductions of ClassiX Software are permitted for use only in accordance with its purpose. The Purchaser is entitled to create a backup copy if this is necessary to safeguard future use. Furthermore, it is authorised to copy ClassiX Software in the course of a data backup duly carried out on a regular basis in a state-of-the-art manner. If the Purchaser acquired ClassiX Software by downloading it, it shall be entitled to copy ClassiX Software onto a data medium when passing it on in accordance with Clause 4 of these Licence Terms.

(4) The Purchaser shall only be permitted use of ClassiX Software which goes beyond the rights of use granted in these Licence Terms after obtaining the prior written approval of the Seller. In the event of additional use without approval (particularly in the event of the simultaneous deployment of a larger number of Users than agreed), the Seller is entitled to invoice the amount accruing for the additional use according to the price list of the Seller valid at such time, unless the Purchaser furnishes proof that the Seller suffered considerably less damage. Further non-contractual claims for damages remain unaffected.

(5) The licence shall be granted for an indefinite period after activation by means of a licence key.

(6) As regards the AppsWarehouse Modules provided in InstantView source code, the Seller grants the Purchaser the authority to create derivations (inheritances) and/or independent additions ("inheritances" and "additions" hereinafter jointly referred to as "AppsWarehouse Extensions"). AppsWarehouse Extensions created by the Purchaser must always be saved by the Purchaser in an independent file separate from the AppsWarehouse Modules and may not contain any ClassiX Software source code. AppsWarehouse Extensions may be used by the Purchaser solely in accordance with these ClassiX Software Licence Terms.

(7) In the event that AppsWarehouse Extensions created by the Purchaser become an integral part of the ClassiX Software standard upon request by the Purchaser and with the approval of ClassiX, the Purchaser shall grant ClassiX all the rights to the respective AppsWarehouse Extensions required for comprehensive commercial exploitation. The Purchaser shall grant ClassiX exclusive rights of use without restriction in terms of content, time and territory, to the respective AppsWarehouse Extensions for all known types of exploitation. In particular, this includes the right to modify, edit or otherwise redesign the AppsWarehouse Extensions and to copy, publish, disseminate or hire out the AppsWarehouse Extensions in their original or in modified, edited or redesigned form or to communicate them to the public (particularly by presenting or broadcasting them or making them accessible to the public), to transmit them over long-distance lines or wireless and use them to operate data processing systems and equipment.

(8) ClassiX Software contains open source components and components of third-party manufacturers (hereinafter jointly: "Third Components"). The licences of Third Components are available under www.classix.de in the directory entitled "Licences and Copyright" (hereinafter: "Third-Party Licence Terms"). Third-Party Licence Terms can change. In the event of any inconsistencies between the provisions of these ClassiX Software Licence Terms and the respective provisions of the Third-Party Licence Terms, the provisions of the Third-Party Licence Terms have priority in relation to the Third Components exclusively.

Clause 3 Decompilation, copyright notice

(1) The Purchaser is not entitled to translate, reverse engineer, decompile or disassemble ClassiX Software without the prior written approval of ClassiX. The Purchaser is permitted to decompile ClassiX Software to achieve interoperability with other programmes within the scope of Section 69e of the German Copyright Act [*UrhG*] on the conditions set out therein if, in addition, the prerequisite has been met that ClassiX has not provided the data required for this to the Purchaser within a reasonable period after being requested to do so in writing. The Purchaser shall treat the information gained through decompilation or provided by ClassiX as confidential.

(2) Copyright notices, serial numbers and other features serving to identify the programme may not be removed or changed under any circumstances. The same applies to the suppression of such features on the screen. Copies of ClassiX Software made by the Purchaser shall be identified as such and provided with a ClassiX copyright notice.

(3) The AppsWarehouse Extensions created by the Purchaser in accordance with Clause 2 (6) may not include any ClassiX copyright notices.

Clause 4 Passing on

The Purchaser is entitled to permanently pass on once or to sell ClassiX Software to a third party provided that the following prerequisites have been cumulatively met:

(i) The Purchaser passes on ClassiX Software to the third party on the data medium described in Clause 2 (3) of these Licence Terms by completely waiving its own use and deleting all copies of ClassiX Software made by it,

(ii) The Purchaser immediately notifies ClassiX in writing of the name and the address of the third party and

(iii) The Purchaser has obliged the third party in writing to observe the terms of use agreed herein.

Clause 5 Duties of the Purchaser

(1) The Purchaser has obtained information on the main functional features of ClassiX Software and bears the risk as to whether these comply with its wishes and needs. Where the Purchaser had any doubts, it sought advice from employees of the Seller or expert third parties before conclusion of contract.

(2) The Purchaser is solely responsible for the set-up of a functioning - and also in view of the additional load caused by the contractual items, an adequately dimensioned - hardware and software environment for the contractual items.

(3) Before use, the Purchaser shall thoroughly test ClassiX Software for its freedom from defects and ability to be used in the existing hardware and software configuration. This also applies to ClassiX Software which it receives under the warranty.

(4) The Purchaser shall observe the information provided by the Seller for the installation and operation of ClassiX Software. It shall obtain the latest information at regular intervals from the websites accessible via the Internet under www.classix.de and take such information into account during operations.

(5) The Purchaser shall take reasonable precautions in case ClassiX Software fails to work properly in whole or in part (e.g. through regular data backups reflecting the degree of risk, error diagnosis, regular inspection of the data processing results).

(6) The Purchaser shall provide complete, prompt and sufficiently precise error messages including data and logs suitable for error analysis to the Seller.

(7) The Purchaser acknowledges that ClassiX Software and the documentation are copyright protected.

Clause 6 Claims based on defects

(1) The Seller shall be liable for defects in supplied ClassiX Software (material defects and defects of title) subject to legal provisions under purchase law (Section 434 et seq. *BGB*), unless otherwise specified in the provisions below in this Clause 6 and in Clause 7 of these Licence Terms.

(2) A material defect is deemed to exist if the ClassiX Software is not of the kind stated in the documentation.

(3) The Purchaser shall have claims based on defects only if the defects reported can be reproduced or otherwise proven by the Purchaser.

(4) In the event of material defects, the Seller shall initially perform under its warranty through subsequent performance. For this purpose, it shall provide, at its option, to the Purchaser a new ClassiX software version without defects or shall rectify the defect; defects are also considered to be rectified if the Seller shows the Purchaser reasonable ways of avoiding the effects of the defect.

(5) In the event of defects in title, the Seller shall initially perform under its warranty through subsequent performance. For this purpose, it shall procure, at its option, for the Purchaser a legally correct possibility of use of the supplied contractual items or of exchanged or modified equivalent contractual items.

(6) If two attempts at subsequent performance fail, the Purchaser is entitled to set a reasonable additional period for the rectification of the defect. In this connection, it must expressly point out in writing that it reserves the right to withdraw from the contract and/or demand damages in the event of another failed attempt.

(7) If the subsequent performance fails also in the additional period, the Purchaser may withdraw from the contract or reduce the remuneration, unless this involves a minor defect.

(8) If the Seller provides services during the identification or rectification of errors without being obliged to do so, it may demand remuneration for this based on its customary rates. This applies particularly if a defect cannot be proven or is not attributable to the Seller. Furthermore, the additional expense on the Seller's side which is incurred as a result of the failure of the Purchaser to duly fulfil its obligations in accordance with Clause 5 shall be remunerated.

(9) Except for claims for damages, claims based on defects become time-barred within a period of 12 months, unless the defect was fraudulently concealed. The limitation period begins upon delivery or provision (and notification of the Purchaser thereof) of ClassiX Software. Clause 7 of these Licence Terms apply to claims for damages.

(10) If the Purchaser has modified the product supplied, claims based on defects exist only if the Purchaser furnishes proof that the defect is not based on the modification.

(11) The Seller shall not assume any guarantees, unless this is expressly agreed in writing between the Seller and the Purchaser using the term "guarantee".

Clause 7 Liability

(1) The claims of the Purchaser for damages or the compensation of expenses incurred in vain shall be based on this clause regardless of the legal nature of the claim.

(2) The Seller shall not be liable for any simply negligent breach of non-essential contractual obligations. In the event of a simply negligent breach of an essential contractual obligation, the liability of the Seller shall be limited to typical damage which is foreseeable based on the type of goods. Essential contractual obligations are defined as obligations, the fulfilment of which makes the proper implementation of the contract possible at all and compliance with which the contracting party may regularly rely upon.

(3) The limitations of liability shall not affect claims of the Purchaser based on product liability. Furthermore, the limitations of liability shall not apply in case of any physical injury or damage to health attributable to the Seller or in case of death and in the event of the assumption of a guarantee by the Seller or the fraudulent concealment of a defect.

(4) To the extent that the liability of the Seller is excluded or limited, this shall also apply to its salaried employees, workers and vicarious agents.

(5) The Purchaser is obliged to make data backups as defined in Clause 5 (5) of these Licence Terms. Liability for the loss of data is limited to the typical recovery costs which would have been incurred if the Purchaser had made backup copies on a regular basis reflecting the degree of risk.

(6) The Seller shall not be liable for damage caused as a result of the editing or modifications of AppsWarehouse Modules by the Purchaser or third parties. This shall not apply if the Purchaser furnishes proof that the damage was not caused by the editing or modification carried out by it.

Clause 8 Written form, choice of law, place of jurisdiction

(1) The conclusion of contract and later contractual amendments and supplements require the written form in order to be effective. This shall also apply to an amendment to this clause. Additional verbal agreements have not been made.

(2) The Parties agree the application of the law of the Federal Republic of Germany, excluding the UN Sales Convention, for all legal relations arising under this contractual relationship.

(3) If the Purchaser is a merchant as defined by the German Commercial Code [*HGB*], a legal entity under public law or special fund under public law, the place of jurisdiction of the registered office of the Seller is agreed for all disputes arising under or in connection with the implementation of this contractual relationship.

(4) Should a provision of this contract be or become invalid, this shall not affect the validity of the contract in other respects.