

License and Maintenance Conditions

graphomate GmbH
Scharnhorststraße 4
DE-24105 Kiel
(Hereinafter referred to as “graphomate”)

As of: October 2014

§ 1 Object of Contract

- 1 These conditions shall apply to the software together with corresponding documentation – hereinafter referred to as “graphomate products” – purchased from graphomate by the licensee as well as for the upkeep of said products (maintenance and support). These conditions are an integral part of the License and Maintenance Agreement reached between the licensee and graphomate.
- 2 In the event of purchase of *graphomate products* via Webshop e.g. SAP Store the General Terms and Conditions of shop operator shall also apply.
- 3 The General Terms and Conditions of the licensee shall not apply.

§ 2 Contract Period and Termination

- 1 These conditions shall go into effect either upon the date agreed upon in the License and Maintenance Agreement or at the time of order via the Webshop of graphomate.
- 2 The License and Maintenance Agreement is renewed automatically for a period of one year if not cancelled by either party in writing three months prior to expiration of the agreement.
- 3 graphomate may terminate the License and Maintenance Agreement at any time if the licensee violates the contractual obligations. No refund of license fee shall be paid upon termination for breach of contract.
- 4 The licensee agrees to delete all *graphomate products* specified in the License and Maintenance Agreement within 10 days after termination of the contract.
- 5 If graphomate ceases to distribute a product, then graphomate shall be entitled to terminate this Agreement notice as relates to this product in part at any time by giving three months'. Remuneration in this instance shall be reduced accordingly.

§ 3 Prices and Payment Policies

- 1 Unless otherwise stipulated in the License and Maintenance Agreement, the license fees and payment conditions included in graphomate's current price list for *graphomate products* shall apply.
- 2 graphomate shall charge the amount agreed upon in the License and Maintenance Agreement in advance at the beginning of each agreed period.
- 3 Licenses for *graphomate products*, which the licensee purchases in addition during the validity period of this License and Maintenance Agreement, are required to be integrated into the existing License and Maintenance Agreement including the appropriate additional compensation. If this has not occurred after a period of one month, graphomate is authorized to cancel the License and Maintenance Agreement without giving further notice.
- 4 All prices quoted by graphomate are exclusive of applicable VAT.
- 5 In general, invoices are payable within 30 days. If the licensee is in default of payment, graphomate shall be entitled to charge default interest at the respective applicable statutory rate.
- 6 graphomate shall have the right to terminate the License and Maintenance Agreement if the licensee is in arrears of payment by more than one month.

§ 4 Provisions for Use

- 1 graphomate shall remain the owner of all rights to *graphomate products*.
- 2 With payment of a licensing fee, graphomate grants the licensee a non-exclusive, perpetual right to use *graphomate products* and to make as many copies as the agreed maximum number of users necessary for use of the product. The licensee shall ensure that the number of persons using *graphomate products* at the same time does not exceed the number of licenses.
- 3 Upon request, the licensee shall permit graphomate to make measurements of the (user-) licenses for *graphomate products* used by the licensee.
- 4 The licensee is prohibited from editing *graphomate products*, changing their arrangement, or making any other alterations, including the correction of errors. Furthermore, the licensee is not entitled to perform reverse engineering, to decompile, or to translate it in any other way into source code or into any other human-readable form.
- 5 The licensee is entitled to make backup copies of *graphomate products* in accordance with normal use.
- 6 graphomate is entitled but not obliged to provide upgrades of *graphomate products*.
- 7 Trial versions of *graphomate products* shall not be used as productive versions.

§ 5 Documentation

- 1 Provision of documentation for the *graphomate products* delivered shall be due only when this has been agreed upon between both parties in writing in the License and Maintenance Agreement.
- 2 Provision of documentation in the English language is permitted.

§ 6 Maintenance

If agreed upon, graphomate shall perform maintenance during the period of the License and Maintenance Agreement to correct errors that occur during the use of the *graphomate products* specified in the License and Maintenance Agreement.

Maintenance shall include the following services:

- 1 The licensee shall always receive from graphomate the new versions of the products at no additional charge. A new version of a product shall exist if graphomate has released an altered or improved version of the product.
- 2 After licensee has informed graphomate of a reproducible error, graphomate shall correct said error. An appropriate timeframe shall be allocated to graphomate for correction of said error. An error in terms of these conditions exists when the product does not perform a function specified in the documentation, yields incorrect results despite proper use, interrupts its run in an uncontrolled manner or in any other manner that either prevents or more than slightly affects the agreed use.
- 3 Troubleshooting shall include limitation of the error, error diagnosis, elimination of the error or, if this is not possible with a reasonable amount of effort, providing operational readiness of the product through circumvention of the error. Correction of the error also shall include delivery of the modified product to the licensee and informing him of the nature and extent of modifications and the use of said modifications.
- 4 The licensee shall make available to graphomate all information required for troubleshooting. It may be necessary to provide graphomate the data model used with actual data.
- 5 In the event that this does not involve a reproducible error, graphomate shall provide the licensee with the appropriate support in troubleshooting.
- 6 The licensee is not entitled to correct the errors himself.
- 7 In the event the fault cannot be traced through the documentation provided, the licensee agrees to grant graphomate the remote access required to the systems in question.
- 8 The rights of use to a provided new version and/or *graphomate product*, which has either been modified or been extended due to error correction, are governed by the Terms and Conditions agreed upon by the licensee at the original time of purchase. New license rights to the provided *graphomate products* are purchased only to the extent of the actual improvements or modifications made to the respective *graphomate product*.

§ 7 Support

If agreed upon, graphomate shall provide support services for questions on the part of the licensee pertaining to the use of the *graphomate products* specified in the License and Maintenance Agreement for the period of said License and Maintenance Agreement. The support covers in detail the following services:

- 1 Employees of the licensee shall be permitted to send questions and problems pertaining to the use of *graphomate products* to the e-mail address provided on the website. graphomate shall respond by no later than the following business day.
- 2 This support is available only for issues directly related to the use of *graphomate products*.
- 3 In the event that questions and problems pertaining to the use of *graphomate products* cannot be resolved either via telephone or in writing, graphomate shall provide support via remote connection.

§ 8 Limitation, Older Versions

The obligation to provide the aforementioned maintenance and support services pertains to the current version of *graphomate products*. The obligation on the part of graphomate to provide maintenance and support for earlier versions of *graphomate products* shall exist for a period of twelve months after availability of the newer version. After the twelve months period has expired, graphomate has the right to refuse maintenance and support for these older versions, or – at the discretion of graphomate - to perform the maintenance and support services for payment of resulting additional expenses.

§ 9 Exclusions

The afore-mentioned maintenance and support services do not include:

- 1 Maintenance and support services for *graphomate products* not operated in accordance to the specified provisions for use;
- 2 Maintenance and support services for improper operation, negligent or intentional damage to *graphomate products* or carriers on which they are recorded;
- 3 Maintenance and support services for product parts with functions dependent upon other data processing programs - like SAP BusinessObjects Dashboards (Xcelsius) or Design Studio standard components;
- 4 Provision of *graphomate products* with additional functionalities not stipulated in the License and Maintenance Agreement;
- 5 Maintenance and support services at installation sites of the products that are not listed in the License and Maintenance Agreement;
- 6 Maintenance and support services for *graphomate products*, which have been altered by unauthorized interference with the source code.

§ 10 Confidentiality

- 1 The licensee is obligated to take the appropriate measures to prevent unauthorized access by third parties to the *graphomate products*. The employees of the licensee shall be advised on the compliance with these conditions and the provisions of copyright law.
- 2 Both contract parties shall treat as confidential all non-public data, which has been marked as confidential and made available to the other contract partner to provide the services agreed upon.
- 3 The obligation to confidentiality does not apply to ideas, concepts, know-how, and techniques related to information processing in general. They shall not apply to data already known to the other contract party, or known from general sources not governed by this contract. The statutory obligation to observe confidentiality shall remain unaffected.
- 4 If the licensee must disclose any confidential personal data to graphomate for the provision of services, which requires treatment with greater confidentiality beyond graphomate's normal scope of confidentiality and data protection measures, the licensee shall inform graphomate thereof and a supplemental agreement with graphomate must be reached prior to transfer and processing of said data.

§ 11 Surrender and Transfer of Products

- 1 The licensee shall be entitled to transfer (sell) the *graphomate products* to third parties only with the prior written consent of graphomate.
- 2 The licensee is under no circumstances entitled to rent, lease, or to make available to third parties the *graphomate products* either permanently or temporarily without the written consent of graphomate. Employees of the licensee shall not be deemed a third party, as long as the transfer is to perform the duties of said employees.
- 3 The trade with used licenses of *graphomate products* acquired through download is strictly prohibited.

§ 12 Guarantee

- 1 graphomate shall guarantee for a period of 12 months from the time of delivery of the product that the function of the *graphomate products* is primarily in accordance with the description given in the user manual; minor discrepancies shall be disregarded.
- 1 SAP BusinessObjects Design Studio and Dashboards (Xcelsius) are not tools for pixel-perfect visualization of numerical data. Therefore, slight deviations in the presentation of numerical data may occur, which are technically unavoidable. Such inaccuracies in visualization do not constitute a defect on the part of the *graphomate products*.
- 2 In the event that the licensee has given notification of a defect, this complaint must be in written form and include a precise description of the defect and its manifestation, so that a review of the defect (e.g. presentation of error messages) and the exclusion of an operational error (e.g. description of the work steps) are possible. In the event the fault cannot be traced using the provided documentation, the licensee agrees to provide graphomate with the necessary access to the systems in question via remote connection.
- 3 If the complaint is justified, graphomate shall be obligated to rectify the defect within a reasonable period of time and to improve the *graphomate products*. If the defect is not corrected after two attempts to repairs it, the licensee is entitled to withdraw from the License and Maintenance Agreement or to demand a reduction of the remuneration (markdown) and is entitled to either compensation for damages instead of specific performance or compensation for wasted expenses, whichever is preferred.
- 4 graphomate is entitled to refuse the subsequent performance if this can only be carried out with disproportionate costs to graphomate. In this case, a withdrawal from the contract is possible
- 5 Once the licensee has exercised his right to withdraw from this agreement, the rights of use to the *graphomate products* shall also end. In this event, the licensee is obligated to remove the *graphomate products* from all storage media, to destroy all copies of the *graphomate products*, and to inform graphomate thereof in writing. Withdrawal due to an immaterial defect is not possible
- 6 If the licensee asserts warranty claims against graphomate and it becomes apparent that either no defect is present or the alleged defect does not oblige graphomate to warranty, the licensee is obligated to reimburse graphomate for the time, effort, and expenses incurred if the licensee has acted with gross negligence or willful misconduct.

§ 13 Liability

- 1 graphomate is responsible for liability claims extending beyond the warranty only in the event of gross negligence or intent according to the statutory provisions. In the event of slight negligence, graphomate is only liable if a major contractual obligation (cardinal obligation) is breached or in the event of default or impossibility to perform. In the case of liability due to slight negligence, the liability is limited to damages, which are foreseeable and/or typical. A liability for lack of guaranteed quality, for malice, personal damage, legal defects pursuant to the German Product Liability Act (Produkthaftungsgesetz) and the Federal Data Protection Act (Bundesdatenschutzgesetz) remains unaffected.
- 2 In the event of a warranty or liability claim against graphomate, contributory negligence on the part of the licensee or his employees is to be considered appropriate, in particular in the case of insufficient error reporting or insufficient data backup. Data backup shall be deemed to be insufficient if the licensee has not taken adequate up-to-date precautionary measures to provide protection against external influences, including computer viruses and other phenomena which may endanger individual data or entire sets of data.

§ 14 Free-Versions of *graphomate products*

- 1 The licenses for the Free-versions of *graphomate products* are provided free of charge. They may be reproduced, freely distributed and used, although they may not be used for commercial purposes. graphomate does not assume any warranty or liability, maintenance and support for this version, to the full extent permitted by law.
- 2 The entire risk as to the quality and the performance of the Free-versions of *graphomate products* is with the licensee. graphomate is in no event liable for any damages or consequential damages arising out of the use or inability to use its Free-versions.
- 3 graphomate is free to issue and distribute upgrades of the Free-versions.

§ 15 Trial-Versions of *graphomate products*

- 1 Trial-versions of *graphomate products* serve for assessing the range of functionality of *graphomate products* and therefore are, contrary to the Free-version, not limited in their functionality.
- 2 They may be used by the licensee to a limited degree for test purposes and free of charge during a defined period of time. They may be distributed within the company of the licensee, but they shall not be used in a production environment. A productive use of these Trial-versions is not permitted.
- 3 The Trial-versions of *graphomate products* are granted a free of charge license for up to three months. Upon expiry of that period of time, it is not permitted to use the Trial-version and all applications created with the Trial-versions any longer – unless a Full-version is purchased.
- 4 The entire risk as to the quality and performance of the Trial-versions of *graphomate products* is with the licensee. *graphomate* is in no event liable for any damages or consequential damages arising out of the use or inability to use its Trial-versions.

§ 16 Property Rights of Third Parties

- 1 *graphomate* guarantees that the *graphomate products* supplied in the framework of this agreement shall be free of the copyrights and patents of third parties; this shall only apply if *graphomate* was neither aware of them nor could have become aware of them despite reasonable effort.
- 2 Should, however, a third-party claim exist against the *graphomate products*, *graphomate* shall release the licensee from any and all obligations under the following provisions if the licensee leaves the defense against such alleged infringement of copyrights or patents (hereinafter referred to as the "infringements of proprietary rights") to *graphomate*. Provided that the licensee notifies *graphomate* in writing without delay of the assertion of such claims and provides *graphomate* with all information necessary to evaluate the situation, *graphomate* shall ascertain within a reasonable period of time whether and how an asserted claim is to be defended against or settled, and shall notify the licensee thereof. Until the expiry of such period, the licensee shall be obligated to do everything without delay which is necessary to avoid the forfeiture of any rights; this shall not include entitlement to a defense against or a response to such claims independent of *graphomate*. Should *graphomate* decide to assume the defense against such claims, the licensee shall provide *graphomate* with all necessary information and other appropriate support in this defense.
- 3 In the event of infringements of proprietary rights, *graphomate*, under exclusion of further claims but subject to the provisions in Section 16, paragraph 2 and in Section 14 at *graphomate's* own discretion and own expense, is entitled to (i) modify or replace the *graphomate product* to match the functionality of the original *graphomate product* but to no longer infringe upon the industrial property rights or copyrights of third parties, or (ii) to acquire additional rights of use for the licensee, or (iii) to take back the *graphomate product* with reimbursement of the license fee paid.
- 4 *graphomate* is not liable for infringements of proprietary rights if they are based on editing or modification of the *graphomate product*, which was undertaken without the prior written consent of *graphomate*.
graphomate is also not liable for infringements of proprietary rights stemming from use of the *graphomate product* other than that specified in the user manual or from use in conjunction with components not authorized by *graphomate*.

§ 17 Data Protection and References

- 1 *graphomate* saves your data if necessary for business purposes and in accordance with the Federal Data Protection Act (Bundesdatenschutzgesetz / BDSG) and German Telemedia Act (Telemediengesetz / TMG).
- 2 *graphomate* edits personal data for the processing of orders and transfers said data for this purpose to services providers, such as our e-commerce partner cleverbridge or the operator of SAP Store, amongst others.
- 3 The licensee agrees that, following the installation of the licensed *graphomate products*, the licensee shall allow transfer of the following information one time via encrypted connection to the server of *graphomate* for license monitoring and support purposes:
 - Serial number of the licensee and the IP address,
 - as well as a product install ID dependent of the date of installation.Additional personal data shall not be transferred.
- 4 We use PIWIK - an Open-Source-Software with own servers - for statistical analyses of the use of Trial-versions of *graphomate products*. We use the company name, IP-address, time and place of using the Trial-version, run- or design-time and the name of the BI-App. Additional personal data shall not be transferred.

- 5 The privacy protection interests of the licensee shall always be given special consideration by graphomate and the licensee's data shall always be treated as strictly confidential.
The collected data will be processed and used by graphomate solely for the aforementioned purposes.
- 6 Unless otherwise agreed upon, the licensee and licensor are permitted to name each other as a reference contract partner and to use their logo.

§ 18 General Provisions

- 1 graphomate shall be entitled to authorize subcontractors to perform the maintenance of *graphomate products*.
- 2 The dispatch or transmission of services by graphomate occurs at the expense and risk of the licensee.
- 3 All claims arising from this agreement can be assigned or transferred by the licensee only with the prior written consent of graphomate.
- 4 Place of jurisdiction for all disputes arising under the License and Maintenance Agreement and these conditions, where legally permissible, is Kiel in Germany.
- 5 This agreement is governed by the laws of the Federal Republic of Germany under exclusion of the conflict rules as well as of the UN Convention on Contracts for the International Sale of Goods.
- 6 Additional verbal agreements have not been made.
- 7 Should provisions of these conditions be partly or wholly invalid, then the other part of these conditions remains fully valid. Rather, the parties shall undertake to replace the ineffective provision with one that comes closest to the commercial intent. Amendments of these conditions require written form. That also applies to the cancellation of the written form clause.