# License Terms and Conditions for IAV Kedu

### 1. Validity of these conditions

(1) By acquiring the right to use IAV Kedu as Software as a Service (hereinafter "Software") specified in the separate Software description, you (hereinafter "Licensee") agree to these License Terms and Conditions ("Conditions") of IAV GmbH Ingenieurgesellschaft Auto und Verkehr, Carnotstraße 1, 10587 Berlin, Germany (hereinafter "Licensor") for the use of the Software.

(2) Subject to deviating agreements in individual cases, contracts for licensing the Software are concluded exclusively in accordance with these Conditions. Conflicting or deviating general terms and conditions of the Licensee shall only be binding if the Licensor has expressly acknowledged them; this must be done in writing. These Conditions shall also apply if the Licensor performs the delivery or service without reservation in the knowledge of conflicting or deviating terms and conditions of the Licensee.

(3) The Licensor's offer to conclude a contract in accordance with these Terms and Conditions is directed exclusively at natural persons or legal entities acting as "traders" according to § 14 German Civil Code (BGB). The Licensee therefore warrants that it is entering into the contractual relationship with the Licensor exclusively in the exercise of its activities as an entrepreneur or freelancer or in the context of its activities for its employer which is itself a trader.

### 2. Contract execution

(1) The transfer point for using the Software is the router output of the Licensor's data center. The Licensor is not responsible for establishing and maintaining the data connection between the Licensee's IT systems and the described transfer point. The use of the Software may be subject to restrictions or impairments due to circumstances beyond the Licensor's control. These include, in particular, the hardware and Software and technical infrastructure used by the Licensee, actions by third parties not acting on behalf of the Licensor, technical conditions of the Internet that cannot be influenced by the Licensor and force majeure. Continuous availability of the Software is therefore not guaranteed.

(2) The Software shall only provide the features, technical data, etc. expressly specified in the contract; these shall only constitute guarantees the Licensor expressly declares that it wishes to assume liability for them regardless of fault or if they expressly designated as such by the Licensor; guarantee declarations must be made in writing in order to be effective. Unless otherwise by law, the Licensor shall only be liable for advice to the extent that it has assumed this as a primary contractual obligation.

(3) The Licensor may maintain, update and further develop the Software at any time and, in particular, adapt it due to a change in the legal situation, technical developments or to improve IT security, which may result in restrictions on the availability and usability of the Software. Such measures may also be carried out during normal business hours.

(4) The Licensor is not responsible for adapting the Software to the Licensee's IT environment, unless expressly agreed otherwise.

(5) The Licensor shall take state-of-the-art measures to protect the Licensee's data. However, the Licensor shall have no duty of safekeeping or care regarding the data.

(6) Notwithstanding the continued responsibility for the fulfillment of contractually owed services, the Licensor is entitled without restriction to involve third parties in the fulfillment of the contract.

### 3. Rights of use / licenses

(1) Upon conclusion of the contract, the Licensee is granted a simple (non-exclusive), non-transferable and non-sublicensable right to use the Software by the users specified by name (named-user) or by number (concurrent-user), depending on the agreement, limited to the worldwide territory outside the United States of America (USA) and in time until the end of the agreed period of use and unlimited in terms of content. In the case of demo versions, the aforementioned right of use is free of charge and limited to use for internal testing purposes.

(2) If the Licensor provides the Licensee with Software (parts) (including patches, bug fixes and documentation), simple (non-exclusive) rights of use are granted to the Licensee to the extent that they exist for the Software with which they are to be used as intended or which they are to replace.

(3) The use of free and open source software is generally permitted within the scope of the Software. If free and open source software is used by the Licensor, only the separately provided license conditions apply in this respect.

### 4. Maintenance services (support)

If the Licensee has purchased a license with Software support, the separate Terms and Conditions for Maintenance Services (Support) of Software as a Service of the Licensor shall apply in this respect

### 5. Obligations of the Licensee to cooperate

(1) The Licensee assumes as an essential contractual obligation to ensure that all agreed cooperation and provision services are provided in the required quality and on the agreed or required dates without additional costs for the Licensor. Insofar as this is necessary for the provision of services, the Licensee shall in particular provide sufficient numbers of its own personnel and competent contact persons for the entire duration of the cooperation.

(2) The Licensee must protect and store the access data transmitted to it against access by third parties in accordance with the state of the art. The Licensee shall ensure that use is only made within the contractually agreed scope. The Licensor must be informed immediately of any unauthorized access.

(3) The Licensee shall check the data for viruses or other harmful components before storing or using the Software and shall use state-of-the-art measures (e.g. virus protection programs) for this purpose. The Licensee is obliged to regularly back up data and programs at intervals appropriate to the application.

(4) The Licensee warrants that the content and data used and stored by him in the Software do not violate applicable law, official orders or the rights of third parties. The Licensee shall indemnify the Licensor against claims asserted by third parties due to a breach of this provision upon first request.

(5) The Licensee shall provide the Licensor with all facts relevant to the performance of our service in full. The Licensor is not obliged to check the data, information or other services provided by the Licensee for completeness and correctness, unless there is reason to do so, taking into account the circumstances of the individual case, or if the obligation to check has been expressly assumed as a contractual obligation. If information or documents of the Licensee prove to be incorrect, incomplete, ambiguous or objectively not executable, the Licensee shall make the necessary corrections and/or additions immediately after notification by the Licensor. The Licensee shall immediately rectify or have rectified any defects or malfunctions of components provided by the Licensor.

### 6. Terms of payment

(1) The prices are net prices, i.e. excluding statutory VAT. The prices apply exclusively under the condition that the deliveries and services are free of taxes, customs duties, levies or other charges arising from the fact that the license grantor provides its deliveries and services outside Germany. In the event that taxes, customs duties or levies are imposed by the public authorities, the prices shall be increased accordingly by these amounts.

(2) The respective price is to be paid by the Licensee at the beginning of the usage period. Consumption-based costs are invoiced at the beginning of the following month.

(3) Invoices from the Licensor must be paid within 30 days of the invoice date without deductions. In the event of late payment, the Licensee shall owe interest on arrears at the statutory rate, unless the Licensor can prove that the Licensee has suffered higher damages.

**7. Claims for defects**

(1) The Licensee must notify the Licensor immediately of any defects in the Software. A defect does not exist if an error claimed by the Licensee cannot be reproduced. If the Licensee has interfered with the Software, the Licensee shall only be entitled to claim for defects if the Licensee proves that the interference was not the cause of the defect.

(2) If it turns out that a defect alleged by the Licensee does not exist, in particular if an alleged defect cannot be reproduced, the Licensor shall be entitled to demand reasonable compensation for its expenses, unless the Licensee is only guilty of simple negligence.

(3) A warranty for only insignificant reductions in the suitability of the Software is excluded.

(4) A reduction of the remuneration or claims for damages due to malfunctions of the Software for which the Licensor is not responsible are excluded. This exclusion shall not apply if any malfunctions persist for a period of more than one week or significantly impair the Licensee's business operations.

(5) The right to rectify a defect yourself in accordance with § 536a (2) BGB (German Civil Code) is excluded.

(6) In the case of standard products from third-party suppliers where the Licensor merely arranges the conclusion of a contract with the third-party supplier for the Licensee, the Licensee's claims for defects shall be directed only against the respective third-party supplier; this shall also apply in the event of infringement of third-party property rights by the third-party supplier.

(7) Claims for damages exist exclusively in accordance with the following Section 8 of these Conditions.

**8. Liability**

(1) When providing a demo version, the Licensor is only liable for intentional or grossly negligent acts; see § 599 BGB.

(2) Strict liability for initial defects in accordance with § 536a (1) BGB is excluded. In this respect, the Licensor shall only be liable in the event of intent or gross negligence. Otherwise, the Licensor shall be liable on the merits

   - for intentional or grossly negligent acts and

   - for any culpable breach of material contractual obligations.

(3) Material contractual obligations are those contractual obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely. In the event of a breach of a material contractual obligation due to simple negligence, the Licensor's liability shall be limited to the damage that is foreseeable and typical for the type of transaction in question.

(4) As typically foreseeable for this type of contract, the liability of the Licensor in the event of a breach of a material contractual obligation due to simple negligence is limited to the amount of the price for each case of damage, whereby the liability for all damage caused by simple negligence in connection with this contract is limited to a maximum amount of EUR 100,000.00. A case of damage is understood to be a defect in the Software and all resulting damage.

(5) The Licensor shall only be liable for the recovery of data if the Licensee has ensured that lost data can be recovered with reasonable effort.

(6) Liability for damages resulting from injury to life, body or health as well as liability in accordance with §§ 1, 4 ProdHaftG (German Product Liability Act) remain unaffected.

(7) Insofar as liability for damages is excluded or limited in accordance with the above provisions, this shall also extend to the personal liability of the Licensor's executive bodies, employees and other staff, representatives and vicarious agents and shall also apply to statutory liability in tort.

**9. Statute of limitations**

(1) Contractual claims of the Licensee due to defects and other contractual breaches of duty shall become time-barred one year after the statutory limitation period begins.

(2) The statutory limitation periods in the following cases remain unaffected by the above provision:

   - for damages resulting from injury to life, limb or health;

   - for other damages resulting from an intentional or grossly negligent breach of duty by the Licensor or its legal representatives or vicarious agents;

   - for the right of the Licensee to withdraw from the contract in the event of a breach of duty for which the Licensor is responsible and which does not consist of a defect in the purchased item or the work;

   - for claims due to fraudulent concealment of a defect and from a guarantee of quality within the meaning of § 444 or § 639 BGB;

   - for claims according to § 438 para. 1 no. 1, 2 and §634a para. 1 no. 2 BGB;

   - for claims for reimbursement of expenses pursuant to § 445a (1) BGB and

   - for claims for damages pursuant to §§ 1, 4 ProdHaftG.

**10. Review and retranslation**

(1) The Licensee undertakes to conscientiously review the work results achieved with the help of the Software in accordance with the state of the art and to take all safety precautions necessary to avoid damage caused by the use of the work results. In order to be able to recapitulate any damage that may occur later, the Licensee further undertakes to document the results of the review accordingly and, if necessary, to make them available to the Licensor for the purposes of damage analysis.

(2) The retranslation of the Software into other code forms (decompilation) as well as other types of reverse engineering of the various production stages of the Software and the removal of copy protection, serial numbers and other features serving to identify the program is not permitted, unless expressly permitted by law. Copyright notices in the Software code may not be removed.

**11. Final provisions**

(1) The Licensee shall only be entitled to offset, withhold or plead non-performance of the contract if the counterclaims have been legally established, recognized or are undisputed. The Licensee's right to set-off shall be unrestricted insofar as its set-off claim is synallagmatically linked to the principal claim.

(2) The assignment of claims to which the Licensee is entitled from the business relationship with the Licensor, with the exception of monetary claims, is excluded.

(3) The parties undertake to comply with the statutory provisions on data protection when processing personal data and to conclude any necessary data protection agreements separately.

(4) In the event of contradictions between these Conditions and the Terms and Conditions for Maintenance Services (Support) of Software as a Service of the Licensor, these Conditions shall always take precedence.

(5) The law of the Federal Republic of Germany shall apply exclusively; the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(6) The exclusive place of jurisdiction for all claims against merchants and legal entities under public law arising from the business relationship shall be Berlin. This shall also apply to claims arising from checks as well as tort claims and third-party notices. However, the Licensor shall also be entitled to sue the Licensee before any other court having jurisdiction by law. In the case of cross-border deliveries and services, Berlin shall be the exclusive place of jurisdiction for all disputes arising from the contractual relationship (Art. 25 Regulation (EU) 1215/2012).

However, the Licensor reserves the right to sue the Licensee at its general place of jurisdiction or to bring an action before any other court that has jurisdiction under Regulation (EU) 1215/2012.

(7) The parties are aware that the Software may be subject to export and import restrictions. In particular, there may be licensing requirements or the use of the Software or associated technologies may be subject to restrictions abroad. The Licensee shall comply with the applicable export and import control regulations of the Federal Republic of Germany and the European Union as well as all other relevant regulations. The fulfillment of the contract by the Licensor is subject to the proviso that there are no obstacles to fulfillment due to national and international regulations of export and import law and no other legal regulations.

(8) Should individual provisions of the above Conditions be or become invalid, this shall not affect the validity of the remaining provisions.