# General Terms of Contract

General Terms of Contract for the SaaS Offer ("SaaS Conditions")

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As a provider, INTELLIVATE permits the USER to utilize service provisions (use of application services and "software application") at the following SaaS conditions:

## 1. General

1.1     The "SaaS conditions" of INTELLIVATE shall apply exclusively; INTELLIVATE shall not recognize any conditions of the USER which are contrary to or at variance with the "SaaS conditions" of INTELLIVATE, unless INTELLIVATE has expressly agreed to their application in writing. The "SaaS conditions" of INTELLIVATE shall also apply if INTELLIVATE performs the service for the USER without reservation in awareness of conditions of the USER which are contrary to or at variance with the "SaaS conditions".

1.2     Any agreements which have been entered into between INTELLIVATE and the USER for the purpose of the execution of this contract have been set down in writing in this contract.

1.3     INTELLIVATE reserves the right to change these "SaaS conditions". If the "SaaS conditions" are changed, INTELLIVATE shall advise the USER of the changes to the "SaaS conditions" in writing or by electronic means. The USER shall thereupon have the option of objecting to the changes within 6 weeks. In the case of an objection, the previous "SaaS conditions" shall continue to apply. The USER shall receive clear notice of the changes; the changes shall be indicated in concrete terms.

## 2. Object of the contract, description of service

2.1     The object of the contract is to grant the USER the possibility of using of the software IYOPRO of INTELLIVATE via Internet as Software as a Service (SaaS). INTELLIVATE has stored the software application on its in-house server and shall make it available for retrieval by the USER for the term of this contract. The USER may use it to process his data.

2.2      Insofar as any copyright interests of INTELLIVATE as a provider or of third parties are affected, the USER shall be granted a simple, non-transferable right of use, which is time-limited to the period of this contract (simple license). Sublicenses may not be issued.

2.3     Certain services (e.g. relocation and bereavement check) may only be used after separate contracts have been signed and the general terms of contract of third parties accepted by the USER.

2.4     The access data for identification and authentication required for use of the software application shall normally be sent to the USER by INTELLIVATE via e-mail within five working days after conclusion of contract.

2.5     The software application may only be used by the user stated in the SaaS contract. Employees or other persons authorized by the user are also entitled to use the software application in accordance with the contractual use.

### 3. Performance of the contract

3.1     INTELLIVATE shall normally allow the USER to use the application services seven days a week (24 hours). The time needed for the requisite regular maintenance and updating and the technical improvement of hardware and software (scheduled "downtime") shall be excepted, as shall be cases as defined in clause 13 below (force majeure and other impediments to performance which are not the responsibility of INTELLIVATE). The scheduled "downtimes" have already been taken into account in the calculation of the payment; a reduction in the contractually owed payment on account of scheduled "downtimes" shall not come into question.

3.2     The availability of the software application shall be 98 % per annum. Scheduled "downtimes" and/or "downtimes" agreed with the USER shall not be included in the availability calculation.

3.3     INTELLIVATE shall inform the USER of an interruption of availability on account of scheduled "downtimes" in due time in advance (http://www.iyopro.com )

3.4     Accounts set up for test purposes can be blocked by INTELLIVATE at any time without a period of notice being necessary.

### 4. Further developments/changes to the specifications

4.1     INTELLIVATE reserves the right to make changes to the specifications (e.g. through the use of newer or different technologies, systems, processes or standards) in the course of technical progress and for performance optimization after the conclusion of contract. Any major changes to the specifications shall be advised by INTELLIVATE in good time on http://www.iyopro.com . If significant disadvantages arise for the USER as a result of the changes to the specifications, the USER shall be entitled to terminate this contract for exceptional reasons as of the date of alteration. The USER must terminate the contract within two weeks of the notification of the changes to the specifications.

4.2     INTELLIVATE may contract out the performance of the application services to third parties in whole or in part. As far as is necessary, INTELLIVATE may make documents, information and data of the USER accessible to third parties, to whom INTELLIVATE has legitimately contracted out services. INTELLIVATE is entitled to change the Internet infrastructure used as well as the third parties commissioned with the performance at any time.

4.3     As a general principle, Intellivate may terminate individual services of the software application with a period of notice of 1 year.

### 5. Service provisions

INTELLIVATE shall set up a hotline. This shall be available to answer inquiries about problems which concern the use of the software application during normal office hours (currently on workdays from Monday - Friday between 8:00 am and 5:00 pm Greenwich Mean Time + 1). INTELLIVATE shall provide application-related information. Application-related support extending beyond directly answerable inquiries shall not be provided.
Inquiries to the hotline shall be made exclusively via the respective contact form in the SaaS portal.

### 6. Obligations to cooperate/responsibility of the user

The obligations to cooperate which are incumbent upon the USER on his own responsibility and which are required for effective provision of the application services include the following in particular:

- The creation of the prerequisites for use of the application services;

- Measures for protection of his data and programs (back-up), especially the regular creation of backup copies in line with the risk;

- The use of virus protection programs on the in-house computer in the current version.

The USER shall basically assume sole responsibility for

- the selection of the software application and the results he thereby intends to achieve;

- information and data which originates from him;

- the devices used by him (hardware and software) and their suitability for data communication with INTELLIVATE;

- the functional capability of his Internet access including the transmission paths.

## 7. Contractual obligations of the user

7.1     The USER agrees to notify INTELLIVATE immediately after becoming aware of a defect in the software application. The USER shall follow the instructions given by INTELLIVATE with regard to the description, localization, determination and reporting of errors. The USER shall precisely define his defect reports and questions to the best of his ability and call on qualified personnel to do this where required.

7.2     The USER agrees to inform INTELLIVATE immediately if there is a change of person (inheritance or other universal succession), address, name, legal form or company.

## 8. Access data

8.1     The USER shall keep his access data secret from unauthorized persons, store it carefully and securely from the access of unauthorized persons and protect it from misuse and loss.

8.2     In principle, the USER shall be responsible for the payment of all fees for the use of the application services via his access identification. If the USER raises an objection against his obligation to pay on account of alleged unauthorized use via his access identification, and if unauthorized third parties acting outside the sphere of influence of the USER can be excluded, he shall not be obliged for payment only if he furnishes proof that there was unauthorized use of the application services via his access identification which was outside his responsibility.

## 9. Payment, term of contract

9.1     INTELLIVATE shall levy a payment for use of the software application ("SaaS charge") in accordance with the SaaS contract.

9.2     The contract shall commence after unlocking and have an unlimited term. The period of notice for an ordinary notice of termination shall be 1 months before the end of the contractual year. The notice of termination must be in writing and reach us no later than the third working day of the first month of the period of notice.

9.3     INTELLIVATE is entitled to adjust the SaaS charge to the current price list. In particular, INTELLIVATE is entitled to adjust the SaaS charges as appropriate for application services for which

INTELLIVATE relies on data supplied by the respective postal services or other data providers in the event of changes to the suppliers' prices.

9.4     The USER shall only have rights of off-set if his counterclaims have been declared legally binding, or are undisputed or acknowledged. The USER shall only be entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

## 10. Claims for defects

10.1     As a rule, the USER is familiar with the software application and its productive capacity. The USER has the opportunity to test the software application for his own purposes in a test phase before concluding this contract. If no significant complaint was made by the USER during a preceding test phase, both contractual parties shall assume that the software application is basically as provided in the contract. As a general principle, a deficiency of the software application is only provided if use of the software application adversely affects the USER to an unreasonable extent.

10.2     The USER is aware that INTELLIVATE does not operate its own network and therefore does not make Internet access available to the USER. For this reason, INTELLIVATE assumes no responsibility for the serviceability of the respective Internet access.

10.3     The liability of INTELLIVATE shall not extend to deficiencies caused by departures from the conditions of use specified by INTELLIVATE.

10.4     INTELLIVATE relies on data provided by the respective postal service as well as other carefully selected data providers for certain service provisions and is therefore dependent on the completeness, up-to-datedness and the thereby associated correctness of this basic data. This also applies to availability and updating. In this respect, INTELLIVATE therefore assumes no guarantee that an erroneous or incomplete address is corrected and updated as part of the address validation.

10.5     If the functions of the software application differ from those which are contractually assumed and/or have deficiencies, the USER shall advise of this without delay.

10.6     The USER may only reduce the payment on account of defects through deduction from the agreed payment if his claim is undisputed or acknowledged by INTELLIVATE or has been declared legally binding.

10.7     A right to terminate this contract for exceptional reasons on account of defects shall only come into consideration if the continuation of the contractual relationship is unacceptable, or a breach of a condition which goes to the root of the contract persists in spite of a notice of reprimand and the setting of a time limit. A notice of reprimand shall not be required if the breach of a condition which goes to the root of the contract is so serious that a notice of reprimand is not deemed to be sufficient to end the breach of the condition and/or to re-establish trust. INTELLIVATE is normally entitled to make two attempts to rectify the respective deficiency before the contract can be terminated for exceptional reasons.

## 11. Liability

11.1     Liability on account of culpable injury of life, body or health shall not be affected; this shall also apply to the statutory liability under the German Product Liability Act.

11.2     Otherwise INTELLIVATE shall be liable without limitation for willful intent and gross negligence, also of its legal representatives and managerial staff. For the fault (willful intent, gross and slight negligence) of other agents, liability shall be limited to the order amount without VAT as well as to such foreseeable damage which is typical for the utilization of a software application of this nature.

11.3    INTELLIVATE shall not be liable for slight negligence, also of its legal representatives, executive staff and other agents, unless an obligation is breached whose compliance is of particular importance for meeting the purpose of the contract (cardinal obligation). In the case of a slightly negligent breach of a cardinal obligation by legal representatives or managerial staff of INTELLIVATE, the limitation of liability as defined in the preceding clause 11.2, second sentence, shall apply accordingly.

11.4    INTELLIVATE shall only be liable for the loss of data and its recovery as provided in clause 11.1 to 11.3 if such a loss could not have been avoided through the data security measures incumbent upon the USER.

11.5    Liability regardless of negligence or fault for errors which are already in existence on conclusion of contract is expressly excluded.

## 12. Data protection

12.1    INTELLIVATE shall comply with the statutory regulations for data protection, especially the Telemedien Act and the Federal Data Protection Act.

## 13. Impediments to performance which are not the responsibility of Intellivate

13.1    Except in cases in which INTELLIVATE has accepted a procurement risk or a guarantee by way of exception, failures or delays of performance as a result of the following circumstances and impediments to performance shall not be the responsibility of INTELLIVATE:

- Circumstances of force majeure as well as impediments to performance

- occurring after conclusion of the contract or becoming known to INTELLIVATE through no fault of its own only after conclusion of the contract and

- with regard to which INTELLIVATE can prove that they could not be foreseen and prevented even by due diligence of INTELLIVATE.

The aforesaid prerequisites - commencement or discovery only after conclusion of contract through no fault of its own, unpredictability and unavoidability proven by INTELLIVATE – shall include in particular:
legitimate forms of industrial action (strike and lock-out); disruptions of operations; power failure (subject to standard fallback and emergency power supply systems); disruptions and attacks from the Internet. INTELLIVATE shall be exempt from the obligation to render services for the duration of these circumstances and impediments to performance. Claims for compensation of the USER shall be excluded in the aforesaid cases.

13.2    In the case of an irrevocable impediment to performance within the meaning of clause 13.1, either contractual party shall be entitled to terminate the contract immediately by termination without notice for exceptional reasons.

13.3    In the case of unreasonable hindrance of performance, INTELLIVATE shall be entitled to terminate the contract without notice for exceptional reasons.

13.4    If use of the software application is not possible for more than five workdays in succession, the USER shall have the right to terminate the contract without notice for exceptional reasons.

13.5    The right of both contractual parties to terminate the contract without notice for exceptional reasons for any other important reason shall remain unaffected.

**14. Court of jurisdiction, applicable law, e-mail transmission, proviso clause**

14.1      If the USER is a merchant pursuant to the Code of Commercial Law, a body corporate organized under public law or a special authority under public law, the court of jurisdiction for all obligations arising from the contractual relationship - also for matters regarding bills of exchange and cheques - shall be the registered place of business of the company of INTELLIVATE or, at the choice of INTELLIVATE, also the registered place of business of the USER. The above agreement conferring jurisdiction shall also apply to users with a registered place of business outside Germany.

14.2      All the rights and obligations arising from and in connection with the contractual relationship existing between INTELLIVATE and the USER shall be exclusively governed by the laws of the Federal Republic of Germany.

14.3      As a general principle, any notifications and declarations of one contractual party which are required under the terms of the contractual regulations or become necessary in the further course of business can be effectually sent to the online address of the other contractual party. Unless otherwise provided in the contract, they shall be regarded as delivered on the workday following their receipt.

14.4      If any provision in this contract should be or become ineffective, the effectiveness of the remaining provisions or agreements shall not be affected hereby