General Terms and Conditions of Use of ASP*-solutions from the MHP Solution Group (TIA innovations GmbH is part of MHP Solution Group)

*Application Service Providing

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§1 Contents of the ASP-Terms and Conditions of Use

(1) The object of these Terms and Conditions of use is the transfer of software from the MHP Solution Group for use via a data network as well as any further related services in this regard.

(2) The MHP Solution Group shall for a charge provide the software by Internet transfer for the Client's use for the duration of these Terms and Conditions of Business.

(3) The range of functions of the software can be seen in the user manual to be provided pursuant to §2 sub-section 4 of this contract.

(4) The use of the software is pursuant to German law and for use in Germany. The MHP Solution Group gives no warranty that the software is suitable or can be used in other locations. Users who access this application from other locations do that at their own instigation and at their own risk. The MHP Solution Group gives no insurance or guarantee that this application of the information contained therein are in compliance with the laws of these locations.

(5) These Terms and Conditions of Use apply in the framework of the time of the contractual monthly or annual fee. After expiry of the term of the contractual fee the provision of the software pursuant to §1 sub-section (1) and thereby the usage conditions become null and void. In the event of ASP-products not based on ASP monthly or annual fees (ToGo-solutions) the validity of these Terms and Conditions of Use are regulated according to the validity of the last ordered transactions package, the term of which is maximally 36 months. Unused transactions packages shall not be reimbursed.

§2 Obligations of the MHP Solution Group

(1) The MHP Solution Group is obliged to provide the Client with the contractual software for use according to the following §3 via a data network and to maintain it. For this purpose the MHP Solution Group stores the software on a server, via which the data network pursuant to §1 sub-section 2 of this contract is accessible to the Client.

(2) The MHP Solution Group is obliged to maintain the software and the data network connections according to the conditions of the following §4.

(3) The MHP Solution Group is further obliged, in the event that it develops newer versions of the software, to immediately replace the old version with the new version according to the conditions of the following §5 of this contract.

(4) The MHP Solution Group undertakes to provide the following:

- The Client shall receive free of charge a copy of the user manual, either in electronic form within the help menu of the application or in a print versions (the choice is with the TIA, depending on the software).

- MHP Solution Group shall install the standard settlement system leased by the Client with all the modules ordered by the Client on an application server in the data-processing centre of the MHP Solution Group.

- All the data storage and communication shall also be undertaken via the data-processing centre of the MHG Solution Group.

- The Client must ensure that the URL provided by MHP is available via the Client computer. In addition an up-to date Java Runtime Version must be installed on the Client's computer. On the wish to use FTP the related ports at the Clients must be activated.

- This shall and can, insofar as nothing other is agreed be installed by the Client himself.

- The Client shall then receive via an ID, a user identification and a password, the access to his specific application environment at the data processing centre.

- Protection of the customs data is undertaken by the MHP Solution Group's data processing centre on a daily, weekly and monthly basis.

(5) The MHP Solution Group is further obliged to store the data of the Client (Data-hosting) according to the condition of the following §6.

(6)The MHP Solution Group is not responsible

- for the application and timely authorisation to participate in the ATLAS-process.

- for communication paths outside the area of influence of the MHP Solution Group of for system drop-outs caused by breakdown of these communication paths (internal customer network and availability of the data processing centre at the customs authority).

§3 Use of the software

(1) The MHP Solution Group shall grant the Client the necessary simple usage rights to the software for using the contractual services pursuant to §2 of this contract.

(2) Insofar as the MHP Solution Group provides the Client with use of third party software, that is to say software produced by third parties, the usage rights that the Client is granted are limited to the range of the usage rights that a third party has granted the MHP Solution Group. In this case the MHP Solution Group is obliged to disclose the range of usage rights it has been granted by the third party.

(3) The MHP Solution Group is obliged to undertake all technical steps that are necessary to ensure an availability level of at least 90 % in the primary working hours based on the primary working time each month. Any corresponding usual levels outside this primary working time is not agreed in the framework of these Terms and Conditions of Use.

(4) Primary working time:
Monday to Friday
07:00 to 18:00 (CET)

(5) The assignment of the software is agreed for an undetermined time. The invoicing of the usage fee shall take place from the month following issue of contract / installation up till the year end in each case. The following invoice extends over the following calendar year. This is the minimum term.

A cancellation is possible after the end of the minimum term with a deadline of 3 months to each year end.

A premature cancellation of the usage shall not require repayment of the annual usage fee.

§4 Maintenance of the software and the data network connection

(1) The MHP Solution Group monitors the functionality of the software continually and removes software defects that have become known without delay.

(2)Whether a defect is in place is determined by the legal regulations. A defect is in place in particular if the software does not fulfil he functions set forth in the description of services, delivers results input independently by the Client incorrectly, breaks its run uncontrollably or does not function correctly in another way, so that the use of the software is impossible or limited.

(3) Die MHP Solution Group constantly monitors the functionality of the data network connection to the service where the contractual software is stored, taking into account the agreed access level pursuant to §3 sub-section 3 of this contract. MHP Solution Group shall inform the Client immediately of any disturbances to function. Insofar as the disturbance to function is based in the MHP Solution Group area, MHP Solution Group undertakes to rectify this immediately.

§5 Current status, up-dating the software, third party software

(1) If any legal regulations or norms change that are of not insignificant relevance to the functionality of the contractual software with regard to the purposes that the Client typically follows when using the software, MHP Solutions Group shall immediately undertake appropriate adaptations of the software, that is to say as soon as the changes should have become known to the MHP Solution Group when using due diligence. The selection of the type of adaptation is the responsibility of the MHP Solution Group.

(2) As soon as the MHP Solution Group changes or supplements the contractual software with new or improved functions or other performance characteristics, the MHP Solution Group is obliged to immediately replace the contractual software with the changed, respectively supplemented software. This applies, however, only if and only when the test phase for the changes and supplements has been concluded and the MHP Solution Group offers the software in the changed or supplemented version on the open market.

(3) Adaptations, changes and supplements to the software shall not affect the obligations of the MHP Solution group pursuant to §3 sub-section 3 of this contract.

(4) Sub-sections 1 to 3 are not applicable where software manufactured by third parties is concerned. In this case the MHP Solution Group is, however, obliged to immediately replace the contractual software with a changed or supplemented version, as soon as the third party has provided the MHP Solution Group with the changed, respectively supplemented software.

(5) Sub-sections 1 to 3 are not applicable if new or additional procedural technologies of the law-maker are concerned that were not yet contained in the provided software.

§6 Data-hosting / -liability

(1) Insofar as the MHP Solution Group is obliged to undertake data-hosting, the Client is entitled to demand from the MHP Solution group at any time evidence of a contractual and sufficient data security. The Client, in any case, has the sole entitlement to the data, and can thus demand the release of individual parts or all data for a processing fee from the MHP Solution Group, in particular after cancellation of the contract, without the MHP Solution Group having any right of retention.

The release of the data is by means of transfer by data carriers or via a data network. The Client has no claim on receiving suitable software for using the data. The overall costs for this are pursuant to the currently valid price-list.

(2) The MHP Solution Group is responsible for the safety of the Client data in the framework of providing the software.

(3) The Client exclusively is responsible for the content respectively the correctness of the data, insofar as it cannot be proven that the data has been changed, respectively falsified by processing algorithms of the MHP Solution Group's software systems. Data that has been falsified by the Client as a result of incorrect treatment by the MHP Solution Group is also not in the area or responsibility or liability of the MHP Solutions Group.

(4)The MHP Solution Group is obliged to take the necessary steps against data losses on computer crashes and to prevent unauthorised access of third parties to this data. The MHP Solutions Group shall undertake regular back-ups for this purpose, which will check the Client data for viruses as well as installing firewalls or similar.

Access data (user names and passwords), which serves for the safe data access by the Clients, may not be made known to unauthorised third parties. Employees of the MHP Solution Group may only have knowledge of this access data or get access to the data stored by the Client, if this is absolutely necessary for the carrying out of this contract.

(5) Data transfer, respectively communication with the customs authorities: The MHP Solution Group is responsible only for fault-free run, respectively transfer of the data for the parts of the communication respectively data transfer to and from the customs authorities, which are under the unlimited influence of the MHP Solutions Group. The MHP Solution Group can take no responsibility for the areas that are not under the unlimited influence of the MHP Solution Group and thus cannot be held liable from any damages incurred thereby.

(6) Data correctness / data consistency with regard to data received from the customs authorities: the MHP Solution Group has no responsibility for the correctness of the data received from the customs authorities, and can thus not be held liable for incorrect data.

(7) The Client's data connection to the data-processing centre of the MHP solution Group: the MHP Solution Group is responsible exclusively for those parts of the data connection of the Client to the data-processing centre, which is under the unlimited area of influence of the MHP Solution Group.

(8) System crashes at the MHP Solution Group's data-processing centre: the MHP Solution Group guarantees and availability in the sum of more that 90 % per month and a drop-out time of maximally 4 hours per day during the agreed working hours per day pursuant to § 3. Excluded hereby is cases of force majeure (power cuts, natural catastrophes, war, and similar).

(9) Document printed data-archiving: The Client is responsible for the archiving of document printed data (prints demanded by the customs authorities). He can print the corresponding papers via the application, respectively demand a corresponding security pursuant to §6 sub-section (1) at the MHP Solution Group.

(10) The following additional agreements apply to S-CHECK:

TIA expressly points out that the licensed software exclusively undertakes an evaluation of already prepared lists, which are accessible to everyone or are offered by third parties, and in connection with this no independent list entries are generated and/or stored on data carriers of any kind.

Accordingly the liability of TIA for any incorrect conclusions and further negotiations of the Clients owing to the results of the evaluations are mutually excluded.

The Client is at liberty to generate his own user-managed list entries. In this regard TIA is not liable for any incorrect or improper use of this functionality.

Irrespective of the foregoing liability regulations, a liability of TIA on grounds of any defects in the underlying lists, such as for example, printing/syntax errors or up-to-date status is mutually excluded both on the grounds and in the amount.

The Client must provide evidence that an evaluation error is not based on the evaluated lists.

TIA is committed to provide the Client with an international evaluation approach. On the other hand a gap-free recognition of the language specifics of the countries does not currently correspond to the actual state of the technology.

On these grounds liability of TIA for reasons of missing strike successes as a result of different ways of writing internationally is mutually excluded both on the grounds and in the amount.

Irrespective of the foregoing regulations the Client shall exempt TIA from all claims in the case of direct claims from one of the legal or natural persons affected by the screening list.

§7 Custody obligations

The client is obliged to take the necessary steps to prevent the unauthorised access to the software and the user manual by third parties. For this purpose the Client shall, insofar as necessary, instruct his employees on adherence to the copyright law. In particular the Client shall prevent his employees from making unauthorised copies of the software or the user manual.

§8 Use by third parties, ban on sub-leasing

The Client is not entitled to make the contractual software available to third parties for use. Sub-leasing of the contractual software is thereby expressly forbidden to the Client.

Exceptions to this are MHP Solution Group – partners, who buy the software from the MHP Solution Group for the purpose of transferring it according to the specific contract data. In this case the MHP Solution Group - partner and the Client must define their possible contractual relationships to third parties in such a way that a gratuitous use of the contractual software is excluded.

§9 Copying and copyright laws

(1) The Client may copy the contractual software, insofar as each copy is necessary for the use of the software. Necessary copying includes loading of the software into the RAM, but not the temporary installation or the storing of the software on data carriers (hard drives or similar) on the hardware installed by the Client.

(2) Any further copying, which also included the print of the programme code as well as photocopying the user manual, is forbidden to the Client. The authority of the Client to copy the programme code under the conditions of §69e sub-section1 UrhG (Copyright Act) remains unaffected.

§10 Adaptation of the software

(1) The client may make no changes to the software. This does not apply to changes necessary for the removal of defects, insofar as the MHP Solution Group is in delay with the removal of the defect, refuses to remove the defect or – in particular on grounds of application or opening of insolvency proceedings – is not in a position to remove the defect.

(2) The decompiling of the provided software is forbidden. An exception to this is copies of the codes or translations of the code form, which are necessary in order to receive the required information for the creation of inter-operability of a independently created computer programme with the provided software or with other computer programmes, insofar as the conditions set forth in §69e sub-section1 Nos1-3 of the copyright law are adhered to.

§11 Warranty

(1) The MHP Solution Group is obliged to remove defects in the contractual software immediately. The MHP Solution Group must take care when undertaking defect removal that no disturbances of influence are incurred in the connection between the server of the MHP solution Group and the Client.

(2) The regulations on the rental contract pursuant to §§535 ff. BGB (German Civil Code) furthermore apply to the warranty. Damage compensation claims regardless of negligence or fault pursuant to §536a, l. Alt. BGB are excluded.

(3) The legal warranty regulations of the Service Contract Law (§§611 ff. BGB) apply to the other obligations of the MHP Solution Group pursuant to §§3 to 7 of this contract.

(4) The MHP Solution Group is not liable for the functionality of the telephone connections to its server, in the event of power cuts and on breakdown of servers on which it has no influence.

(5) The MHP Solution Group is o responsible for the content that the partner prepares pursuant to §6 of this contract. In particular the MHP Solution Group is not obliged to check the content for possible legal breaches.

(6) In cases of slight negligence the MHP Solution Group is only liable on breach of significant contractual obligations (cardinal obligations), as well as in cases of damages to persons and according to the conditions of the product liability law. For the rest the pre-contractual, contractual and out-of-contract liability of the MHP Solution Group is limited to malicious intent and gross negligence, whereby the liability limitations also apply in the case of guilt of a vicarious aide of the MHP Solution Group.

§12 Data protection

The applicable data protection law conditions – in particular the Federal data protection law (FDPL) and the tele-media law (TMG) - are known to the MHP Solution Group. The MHP Solution Group shall adhere to the legal regulations of the data protection in their respective valid versions.

The Client is responsible for the data recorded by him, addresses etc. in the sense of the data protection.

§13 Confidentiality

(1) The MHP Solution Group is obliged to keep strictly secret all confidential procedures, in particular business or operating secrets of the Client that have become known to him in the course of preparation, implementation and fulfilment of this contract, and not pass these on to anyone or exploit them in any other way. This applies to passing them on to any unauthorised third parties, that is to say including unauthorised employees of both the MHP Solution Group and the Client, insofar as passing on the information is not essential for the orderly fulfilment of the contractual obligations of the MHP Solution Group.

In cases of doubt the MHP Solution Group is obliged to request the permission of the Client before any passing on of the aforementioned information.

(2) Die MHP Solution Group is obliged to agree a regulation with all employees working with the preparation, implementation and fulfilment of this contract that is the same in content as the aforementioned sub-section 1.

§14 Final provisions

(1) Exclusively German law applies to this contract.

(2) Insofar as the client is a registered tradesman, the city of Hanover has been agreed as the place of jurisdiction for all disputes arising from or in connection with this contract.

(3) If individual clauses in this contract should be ineffective or lose their validity through a circumstance occurring later, this shall not affect the validity of the remainder of the contract. In place of the ineffective contractual regulation a regulation shall be made that comes as close as possible to what the contract parties would have wanted, insofar as they had preconceived the point concerned. The same applies to any gaps in this contract.

(4) These General Terms and Conditions of Use shall be confirmed by both parties in the order form and thus do not require a separate signature.