



1. Subject matter of the agreement

- 1.1 The customer uses a mobile application (hereinafter referred to as: “App”) on mobile devices, which accesses a database via the World Wide Web, in which data are stored, which are intended to be processed with the app (hereinafter referred to as: DATABASE). In accordance with the order, the offer and the General Terms and Conditions of Operation Regarding the Operation of an App (in case of contradictions in the aforementioned order), Heidelberg mobil international GmbH, Berliner Strasse 41, 69120 Heidelberg (hereinafter referred to as: “HD Mobil”) assumes the obligation to keep the data supplied by the customer and stored in the DATABASE by HD Mobil ready for retrieval via the World Wide Web by means of the App (hereinafter referred to as: “Operation of the App”). The offer contains, in particular, technical specifications regarding the Operation of the App.
- 1.2 By means of the present General Terms and Conditions of Operation Regarding the Operation of an App, exclusively rights and duties between HD Mobil and the customer are regulated. Hereby, claims and rights of the other users of the App are not created.
- 1.3 The Operation of the App takes place exclusively in accordance with these General Terms and Conditions of Operation Regarding the Operation of an App. Other general terms and conditions do not apply.
- 1.4 The regulations of other agreements concluded in writing between the customer and HD Mobil remain unaffected, in particular a development or maintenance agreement with regard to the App concluded, as the case may be, between the parties remain unaffected, without these General Terms and Conditions of Operation Regarding the Operation of an App creating an obligation to conclude such agreements. However, to the extent that regulations of these General Terms and Conditions of Operation Regarding the Operation of an App contradict agreements already concluded, these General Terms and Conditions of Operation Regarding the Operation of an App prevail.



2. Provision of the data to be kept ready

2.1 The customer provides HD Mobil with the data to be inputted into the DATABASE in a manner suitable for this purpose and in a functional manner, in particular, in a file format and file size suitable pursuant to specifications of HD Mobil.

2.2 With respect to contents and data supplied or otherwise provided by the customer or third parties, who are not vicarious agents of HD Mobil, HD Mobil does not assume the responsibility for the content. The customer guarantees that the provided data and contents do not comprise any racist, discriminatory, pornographic, the protection of children and young person's endangering, extremist, terrorist or other unlawful or illegal contents or contents, which violate regulations or conditions of public authorities. HD Mobil is not obliged to examine the supplied contents and data with respect to their legality, correctness or suitability. In particular, HD Mobil is not liable for the permissibility of these contents and data under copyright law, competition law, data protection law or for any other statutory or legal permissibility of these contents and data as well as for the permissibility of their input into the DATABASE and their retrieval through the App. In the event that contrary to this allocation of liability HD Mobil is held liable by third parties or that HD Mobil is the addressee of orders from public authorities, in their internal relationship the customer indemnifies HD Mobil against all claims and from all costs resulting therefrom. This also includes the costs of the legal defence.

2.3 To the extent that due to the offering of the App or of the data kept ready statutory duties to provide information arise, in particular pursuant to §§ 5, 6 TMG (*German Telemedia Act*) as well as § 312c BGB (*German Civil Code*), the customer must ensure - on its own responsibility - that the users of the App and of the data kept ready receive the respective information in the manner required by statute. HD Mobil is not obliged to supervise the proper and complete fulfilment of the statutory duties to provide information by the customer and of the duties with regard to the giving of instructions with respect to any rights of revocation of the users. The



customer indemnifies HD Mobil against all possible claims, which arise from the violation of these obligations.

2.4 The customer ensures that the data provided to HD Mobil do not endanger the operation of the server or the communication network of HD Mobil or the security and integrity of other data stored on the servers of HD Mobil. The customer indemnifies HD Mobil against all damages and expenses, which arise from a violation of this obligation.

3. Services with regard to the Operation of the App

3.1 In accordance with the offer, HD Mobil is obliged to input the data provided to it by the customer into the DATABASE and to keep the data provided to it by the customer ready for retrieval via the World Wide Web by means of the App for the period agreed in these General Terms and Conditions of Operation Regarding the Operation of an App. Any access to the data kept ready takes place through the App, exclusively. The transmission of the data kept ready is limited solely to the data communication between the server of HD Mobil, on which the data are stored, and the handover point to the Internet operated by HD Mobil. It is impossible for HD Mobil to exert any influence on the data traffic outside of the own network infrastructure of HD Mobil. A successful forwarding of information from or to target computers or other EDP devices outside of the own network infrastructure of HD Mobil is not owed.

3.2 HD Mobil provides the services with regard to the Operation of the App with an availability of 98.5%. The availability is calculated on the basis of the time attributed to the respective calendar month in the term of the agreement less the maintenance times. HD Mobil is entitled to carry out maintenance work on a regular basis for a total of eight hours in the calendar month. During the maintenance work, the aforementioned services are not available. As a general rule, the maintenance work is to be carried out at times, in which according to expectations a small number of accesses to the data are to be expected.



3.4 HD Mobil is entitled to adjust the hardware and software used for the Operation of the App to the respective state of the art and, in particular, to the requirements of the manufacturer or operator of the system environment of the App. In the event that due to such an adjustment additional requirements for the data arise, HD Mobil notifies the customer of these additional requirements. Immediately after the receipt of the notification, the customer decides, whether the additional requirements shall be fulfilled and until when this will happen. In the event that the customer does not declare at the latest until four weeks prior to the date of conversion that it will adjust its data to the additional requirements in due time for the conversion, i.e. not later than three working days prior to the date of conversion, HD Mobil is entitled to give notice of an extraordinary termination pursuant to Section 11.2 of these General Terms and Conditions of Operation Regarding the Operation of an App with the legal consequences regulated in Section 11.3 after prior setting of a time limit accompanied by a threat of termination. In this case, the customer is deemed to be responsible for the extraordinary termination, unless the adjustment of the data is - technically or economically - impossible for the customer or cannot reasonably be expected from the customer.

4. Protection duties of HD Mobil

4.1 HD Mobil is obliged to protect the DATABASE and the data kept ready therein for the customer against access by unauthorized third parties by means of suitable security measures, in particular by means of the utilisation of an up-to-date and constantly updated firewall, which is state-of-the-art, and by means of an up-to-date and constantly updated anti-virus program.

4.2 HD Mobil makes a backup of the DATABASE and the data kept ready therein for the customer on every working day. The data backups are made on a rolling basis in such a manner that the data backed up for a weekday are overwritten in the course of the data backup made for the following same weekday. The backup is always made for the entire content of the



server and, as the case may be, also comprises the data of other customers and other data. Therefore, the customer does not have a claim for the handing over of any of the backup media, but only for the retransfer of the backed up data to the server.

4.3 The physical server, on which the DATABASE and the data kept ready therein for the customer are stored, is set up in an air-conditioned environment. The installation (*Anlage*) must be equipped with an uninterruptible power supply as well as a filter against current fluctuations.

4.4 To the extent that an encryption is agreed, the encryption takes place in accordance with the respectively up-to-date state-of-the-art, currently with 128 bits. The agreement must be made in writing.

5 Blocking

5.1 In case of a directly imminent or occurred violation of the permissibility of the data or the Operation of the App under copyright law, competition law, data protection law or of any other statutory or legal permissibility of the data or the Operation of the App as well as in case of the assertion of not evidently unfounded claims of third parties vis-à-vis HD Mobil for the complete or partial refraining from the Operation of the App, HD Mobil is entitled, taking into account also the legitimate interests of the customer, to temporarily stop, in whole or in part, the keeping ready of the affected data for retrieval with immediate effect (blocking). This applies, *mutatis mutandis*, if and to the extent that a (provisionally) enforceable instrument of a third party or an order of public authorities to block the access to the data kept ready is issued. The blocking must be limited to that information or those data, which supposedly infringe/s rights.

5.2 The customer must be notified of the blocking stating the reasons immediately at least in text form and must be requested to remove within an adequate period of time that information, which supposedly infringes rights, from the data or to explain in detail the legality within an adequate period of time and, as the case may be, to provide proof of the legality within an adequate period of time. In the event that the customer does not react or



does not react in accordance with the aforementioned requirements within the set adequate period of time, HD Mobil is entitled to delete the respective data. HD Mobil notifies the customer of the deletion immediately at least in text form. In the event that the customer objects to the blocking in accordance with the requirements of sentence 1 of this paragraph, the blocking must be cancelled, as soon as a respective order of public authorities has a suspensive effect, as soon as the (provisional) enforceability ceases to exist or as soon as it is secured otherwise that the infringement of the law does not exist.

5.3 In the event that data provided by the customer endanger or impair the operation of the server or the communication network of HD Mobil or the security and integrity of other data stored on the servers of HD Mobil, HD Mobil is entitled to delete these data and to interrupt the keeping ready of these data for retrieval through the App to the extent that this is necessary for the removal of the threat or impairment. HD Mobil notifies the customer of this measure immediately.

6. Remuneration

6.1 From the point in time of the placing of the order or from the point in time agreed otherwise in the order, the customer is obliged to pay for the Operation of the App a one-time set-up fee and a continuing provision fee plus, as the case may be, a flat-rate usage fee for the monthly transfer volume agreed in the offer. The amount of the provision fee and of the flat-rate usage fee follows from the order in connection with the offer.

6.2 The continuing provision fees including the flat-rate usage fee are due monthly in advance, in each case as of the 3rd of a calendar month. HD Mobil sends to the customer - monthly in each case - a respective invoice in accordance with the VAT provisions.

6.3 The respectively applicable statutory VAT is added to all remuneration.

7 Granting of rights

7.1 By means of this agreement, no rights of use with regard to the App or the DATABASE are transferred or affected. Any granting of rights of use



regulated by means of a separate written agreement remains unaffected.

7.2 The data provided by the customer may be protected by copyright. Hereby, the customer grants to HD Mobil limited in terms of time to the term of the agreement, non-transferable and not exclusively all rights of use necessary for the performance of this agreement with regard to the data provided for the purpose of being kept ready and to the information retrievable therein, in particular to

- keep the provided data and the information retrievable therein for the purposes of this agreement ready for retrieval via the Internet,
- to communicate the provided data and the information retrievable therein for the purposes of this agreement to the public through the App and on request (*auf Abruf*) to make accessible to the users, to transmit and reproduce for this purpose the provided data and the information retrievable therein for the purposes of this agreement,
- to reproduce the provided data and the information retrievable therein for the purposes of this agreement on servers of any kind (including proxy servers etc.), in particular for the purpose of the acceleration of the retrieval and the data backup, as well as for purposes of the data backup on data storage media, and
- to modify in whole or in part, for the purpose of the performance of this agreement, in particular to digitise, to translate and to transform for purposes of the inclusion in the database, the provided data and the information retrievable therein for the purposes of this agreement. The authorisation also comprises the only partial utilisation.

7.3 The customer guarantees that it holds all rights pursuant to the aforementioned paragraph and all rights, which are necessary for the utilisation of the App and the data kept ready in accordance with the intended use.



8. Data protection

- 8.1 The parties agree that within the scope of this agreement personal data may not be transmitted outside of the territory of the Member States of the EU or the EEC.
- 8.2 To the extent that in the course of the performance of this agreement by HD Mobil personal data are processed on behalf of the customer, the **Special Contractual Terms for the Commissioned Data Processing** (attached as **ANNEX** apply in this respect by way of supplement.
- 8.3 The customer ensures that necessary approvals under data protection law, if any, with regard to the collection, storage, processing or transmission of personal data are obtained and that the persons affected are sufficiently instructed with regard to their data protection rights. The customer indemnifies HD Mobil against all claims arising from the violation of this obligation, unless the customer or its vicarious agents are not responsible for the breach of duty.



9. Warranty

- 9.1 The warranty for the services to be provided by HD Mobil with regard to the Operation of the App is determined by landlord and tenant law (§§ 535 et seqq. German Civil Code), with the liability for initial defects , which does not depend on the existence of fault, being excluded.
- 9.2 Errors and access failures due to external circumstances not caused by HD Mobil (such as, for example, failures of telecommunication lines outside of the network infrastructure of HD Mobil or errors in the Internet) create warranty claims (in particular claims for damages and/or reduction) only, if and to the extent that the utilisation is impaired substantially and HD Mobil would be able - technically and economically - to limit these impairments to an extent that can reasonably be expected. Short-term impairments of the aforementioned kind do not create warranty claims based on material defects.
- 9.3 In the event that the customer asserts a reduction, the customer is - for the time being - obliged to pay the agreed remuneration in full also in case of the existence of a defect, unless the basis and the amount of the reduction are undisputed or have been determined in a final and legally binding manner. Any claims of the customer for a (partial) reclamation of the remuneration pursuant to § 812 para. 1 BGB remain unaffected.
- 9.4 The customer must notify HD Mobil of defects pursuant to § 536c BGB immediately.
- 9.5 The liability for damages or reimbursement of expenses due to defects is determined, by way of supplement, pursuant to Section 10.
- 9.6 The warranty claims become time-barred in one year from the knowledge or grossly negligent lack of knowledge of the circumstances giving rise to the claim, at the latest after one year from the termination of the agreement. This does not apply in case of intent on the part of HD Mobil or its vicarious agents. A shorter statutory limitation period as well as the regulation in Section 9.4 remain unaffected.



10. Liability for damages or reimbursement of futile expenses

10.1 The liability of HD Mobil is limited pursuant to § 44 a TKG (*German Telecommunications Act*) as follows. In the event that in the course of the provision of telecommunications services for the public HD Mobil negligently breaches the German Telecommunications Act, any ordinance adopted due to this Act, any obligation imposed within an assignment due to this Act or any order of the German Federal Network Agency, the liability vis-à-vis the customer for pecuniary losses is limited to 12,500 EUR. In the event that the obligation to pay damages is caused by a uniform act or a uniform incident causing a loss vis-à-vis several end users and that this is not caused intentionally, the obligation to pay damages is limited - with regard to the total - to a maximum of 10 million Euro notwithstanding the limitation in sentence 1. In the event that the compensation, which must be paid to several injured parties due to the same incident, exceeds the maximum limit, the damages are reduced according to the ratio of the total of all claims for damages to the maximum level. The limitation of liability pursuant to the sentences 1 to 3 does not apply to claims for the compensation for that loss, which is caused by the default in the payment of damages. The limitation of liability with respect to the amount does not apply, if the loss was caused intentionally. Outside of the scope of application of this Section 10.1, the liability of HD Mobil is determined by the following provisions.

10.2 HD Mobil is liable in case of intent or gross negligence. The liability of HD Mobil for losses resulting from a simple negligent breach of a material contractual obligation (cardinal obligation) is limited to losses that are typical of the contract and foreseeable. A cardinal obligation exists, if the fulfilment of this cardinal obligation is a precondition for the proper implementation of the agreement and if the customer is regularly entitled to rely on the fulfilment of this cardinal obligation. The liability of HD Mobil for damages or reimbursement of futile expenses for the simple negligent breach of contractual obligations, which are not material, is excluded.



10.3 The typical and foreseeable loss within the meaning of Section 10.2 is limited - with respect to the amount - to the simple amount of the agreed monthly provision fee including the flat-rate usage fee for every individual case of loss and to the sixfold amount of the agreed monthly provision fee including the flat-rate usage fee for all cases of loss. In the course of the calculation of the limitation of the amount, only such pecuniary losses may be taken into account, which were caused by HD Mobil due to simple negligence.

10.4 It is expressly pointed out by HD Mobil that it is the own responsibility of the customer to ensure that an own data backup is made and a verification of the success of this data backup is conducted prior to the provision of the data as well as to backup and verify this data backup itself on a regular basis. HD Mobil is provided only with copies of the data. Pursuant to these General Terms and Conditions of Operation Regarding the Operation of an App, HD Mobil is liable only for those damages to and deteriorations of the provided data, which would not have been avoidable even in case of a proper and regular data backup by the customer.

10.5 A fault on the part of its statutory representatives and vicarious agents is attributed to HD Mobil.

10.6 The exclusions of liability in Section 10.2 up to and including 10.4 do not apply to losses resulting from the injury to life, body or health. The liability pursuant to the German Product Liability Act and because of guarantees remains unaffected.

10.7 The regulations in the Sections 10.2 to 10.6 apply, *mutatis mutandis*, to the liability in tort. To the extent that pursuant thereto the liability of HD Mobil is limited or excluded, this also applies to the personal liability of the statutory representatives, employees and vicarious agents of HD Mobil.

11. Term and termination

11.1 The agreement commences with the signing of the order by both parties or at the point in time agreed in the order. It is concluded for the minimum term of 24 months and is extended, in each case, for a further 12 months,



unless it is terminated by one of the parties with a notice period of at least 6 months with effect as of the end of the respective term of the agreement, however, for a maximum of - in total - 5 years from the commencement of the agreement. Apart from that, the right to give notice of ordinary termination is excluded. Deviating regulations with regard to the term may be agreed in the order.

11.2 The right of the parties to terminate for good cause remains unaffected. The notice of extraordinary termination must be given within two weeks from obtaining knowledge of the facts relevant with respect to the termination.

In particular, HD Mobil is entitled to give notice of extraordinary termination, if

- payments due are not made by the customer despite being given an additional period of time to meet the obligations or
- a creditor of the customer attaches claims vis-à-vis HD Mobil and if the attachment is not released again within two weeks or
- despite a warning notice accompanied by a threat of termination, the customer breaches its obligations, which follow from these General Terms and Conditions of Operation Regarding the Operation of an App, to provide lawful data in a lawful manner or breaches other material contractual obligations. In the event that the material breach of contract is an act capable of being remedied, the warning notice is replaced by the setting of an additional period of time to meet the obligations accompanied by a threat of termination.

Both parties, respectively, are entitled to give notice of extraordinary termination, if

- the opening of insolvency proceedings with regard to the assets of the respective other contracting party is applied for by it itself (own application) or if such an application - irrespective of the person filing the application - is rejected due to a lack of assets or
- the respective other contracting party is being liquidated.



11.3 In case of every extraordinary termination, the customer remains obliged to pay the remuneration due at the point in time of the extraordinary termination as well as the remuneration for services provided up to the point in time of the extraordinary termination.

In the event that the customer is responsible for the extraordinary termination, the customer is also obliged to pay to HD Mobil the entire agreed remuneration with regard to the remaining term of the agreement up to that point in time with effect as of which the customer could have - at the earliest - given notice of ordinary termination. HD Mobil must accept the crediting against this amount of the costs saved due to the early termination of the agreement and of the expected inflation advantage of an immediate payment. It is presumed that the crediting amount amounts to 10 % of the remaining remuneration for the remaining term of the agreement, with each contracting party remaining free to provide proof of a lower or higher crediting amount.

HD Mobil may claim damages and reimbursement of futile expenses only pursuant to Section 10 of these General Terms and Conditions of Operation Regarding the Operation of an App.

11.4 In order to be effective, any notice of termination must be made in writing.

11.5 Within a reasonable period of time after the termination of the agreement, HD Mobil hands over to the customer - as a database export on a suitable data storage medium - the data to be kept ready provided by the customer to HD Mobil. HD Mobil is obliged to delete any own reproductions of these data in such a manner that a restoration is excluded. This does not apply to data, which with regard to their content are identical to the data provided by the customer, which, however, HD Mobil did not receive from the customer. The customer is aware that, as the case may be, due to the retrievability via the Internet copies of the data may be stored at third parties, in particular in the cache memory of search engine providers. HD Mobil is not obliged to delete such copies at third parties or to ensure their deletion. However, vicarious agents of HD Mobil



are not deemed to be third parties. Statutory obligations to preserve records remain unaffected.

12. Confidentiality

12.1 The contracting parties keep confidential all information to be treated as confidential, which they become aware of in the course of this contractual relationship, and disclose this information to third parties - irrespective of the purpose - only with the written approval of the respective other contracting party. The confidentiality obligation continues to exist also beyond the end of the agreement. Statutory disclosure obligations or disclosure obligations ordered by public authorities remain unaffected.

12.2 Such information is to be treated as confidential (i) which was designated expressly as confidential by the contracting party giving the information or (ii) whose confidentiality clearly follows from the circumstances of the provision.

12.3 The confidentiality obligation does not apply to such information or parts thereof, with respect to which the receiving contracting party provides proof that this information or parts thereof (i) was/were known or generally accessible to the receiving contracting party prior to the date of receipt, (ii) was/were known or generally accessible to the public prior to the date of receipt or (iii) became known or generally accessible to the public after the date of receipt without this occurring due to a breach of this Section 12 on the part of the receiving contracting party.

12.4 At the request of the other contracting party, each party is obliged to provide proof in writing of respective confidentiality obligations signed by its employees. In case of Section 8.2 of these General Terms and Conditions of Operation Regarding the Operation of an App, HD Mobil may provide this proof by means of an obligation to maintain data secrecy to be presented in accordance with the Special Contractual Terms With Regard to the Commissioned Data Processing.

12.5 HD Mobil is entitled to name the customer as a reference.



13. Final provisions

- 13.1 HD Mobil is entitled to use subcontractors and/or freelancers for the purpose of the performance of the commissioned services.
- 13.2 The customer is not entitled to set-off any counterclaims against claims of HD Mobil arising out of this agreement or to assert counterclaims by way of a right of retention or, respectively, right to refuse performance, unless the counterclaim - with regard to the basis and the amount - is undisputed or has been determined in a final and legally binding manner. The possibility for the customer to bring a separate action based on § 812 BGB remains unaffected.
- 13.3 Without the written approval of HD Mobil, the customer is not entitled to assign rights or claims arising out of this agreement.
- 13.4 Exclusively the law of the Federal Republic of Germany excluding the conflict of law rules and excluding the United Nations Convention on Contracts for the International Sale of Goods is applicable to the present agreement.
- 13.5 Heidelberg is agreed as place of performance and place of jurisdiction.
- 13.6 All amendments to, supplements to or more detailed specifications of these contractual terms must at least be made in writing. This also applies to an agreement by which it is intended to deviate from the written form requirement. At the time of the conclusion of the agreement, no verbal side agreements have been concluded.
- 13.7 In the event that individual provisions of this agreement are invalid or lose their validity due to a later occurring circumstance, this does not affect the validity of the remaining provisions of this agreement.