Special Conditions for the Provision of Software by way of SaaS (Software as a Service)

Scope

(1) These Special SaaS Conditions only apply if the Customer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.

(2) With these Special SaaS Terms and Conditions, the contractual partners agree that the Provider (hereinafter referred to as Interroll) shall provide the Customer -with the possibility of using the software application ITRL Conexo and ITRL DIAP (hereinafter referred to as ITRL-SOFTWARE) for access via a telecommunications connection as well as storage space for his application data.

§ 1   Contractual object

(1) The subject matter of the contract between the parties is the provision of the agreed software application ITRL-SOFTWARE described at www. interroll.com for the use of its functionalities, the technical enabling of the use of ITRL-SOFTWARE and the granting or procurement of rights of use for ITRL-SOFTWARE as well as the provision of storage space for the data generated by the Customer through the use of ITRL-SOFTWARE and/or the data required for the use of ITRL-SOFTWARE (hereinafter referred to as application data) to the agreed extent by Interroll to the Customer against payment of the agreed remuneration.

(2) The installation and activation of the necessary gateway and the adjustment of the Customer's own software systems for the use of the ITRL-SOFWARE is not subject matter of the contract between the parties.

§ 2   Provision of ITRL-SOFTWARE and storage space for application data

(1) From the agreed point in time, Interroll shall provide the application ITRL-SOFTWARE in the respective current version on a central data processing system or several data processing systems (hereinafter, also in the case of multiple: servers) for use in accordance with the following regulations.

(2) Interroll is liable for the fact that ITRL-SOFTWARE
  – Is suitable for the purposes resulting from the specifications (www.interroll.com),
  – is free from defects during the entire term of the contract,
  – in particular free of viruses and similar malware, which would render them unsuitable for use in accordance with the contract.

(3) Interroll grants the Customer access to ITRL-SOFTWARE. If the Customer has administrator rights, he can grant access to the ITRL-SOFTWARE to further persons. Interroll reserves

the right to deny access to persons or to block it later, for example if they are competitors of Interroll.

(4) Interroll ensures that ITRL-SOFTWARE corresponds to the proven state of the art. If and to the extent that the provision of a new version or a modification is accompanied by a significant negative change in the functionality of the ITRL-SOFTWARE, by the Customer's work processes supported by the ITRL-SOFTWARE and/or by restrictions in the usability of previously generated data, Interroll shall notify the Customer of this in writing at least six weeks before such a modification takes effect. If the Customer does not object to the change in writing within a period of two weeks from receipt of the notification of change, the change will become part of the contract. Whenever such changes are announced, Interroll shall draw the Customer's attention to the aforementioned deadline and the legal consequences of its expiration if the Customer does not exercise his right to object.

(5) The transfer point for ITRL-SOFTWARE and the application data is the router output of the Interroll's data center.

(6) The system requirements on the Customer's side are listed under www.interroll.com. For changes to Interroll's technical system, the objection solution of paragraph 4 applies accordingly. Interroll is not responsible for the quality of the required hardware and software on the Customer's side or for the telecommunications connection between the Customer and Interroll up to the transfer point.

§ 3 Technical availability of ITRL-SOFTWARE and access to the application data, response times

(1) Interroll guarantees an availability of 98.5 % on an annual average. This does not include downtimes due to maintenance and software updates (max. 5 hrs/week on an annual average) as well as technical or other problems that are beyond Interroll's control. Interroll endeavors to carry out maintenance in time windows in which ITRL-SOFTWARE is only rarely used.

(2) Interroll assures the Customer during support hours a **response time** of eight hours from the time the problem is noticed. The term describes the time Interroll has to react from the receipt of the message to the initial analysis of the situation. This time does not include the solution/remedy of the problem identified in the analysis.

(3) The following support hours apply:
    Monday-Thursday: 08:00-16:00
    Friday: 08:00-13:00
Excluded are public holidays in Germany and the period from 23.12. to 06.01.

§ 4 Failure to perform principal duties

(1) If Interroll does not fully comply with the obligations agreed upon in §§ 2, 3, the following provisions shall apply.

(2) If Interroll is in default with the initial operable provision of the ITRL-SOFTWARE, liability shall be governed by § 13. The Customer shall be entitled to withdraw from the contract if Interroll does not comply with a two-week grace period set by the Customer, i.e. does not provide the full agreed functionality of the ITRL-SOFTWARE within the grace period.

(3) If Interroll does not meet the agreed obligations in whole or in part after the ITRL-SOFTWARE has been made available in an operable state, the flat-rate usage fee pursuant to § 8 para. 2 shall be reduced proportionately for the time during which the ITRL-SOFTWARE was not available to the Customer to the agreed extent or the storage space was not available to the agreed extent. If Interroll is responsible for this non-performance, the Customer may also claim damages in accordance with § 13.

(4) If a use of the ITRL-SOFTWARE is not restored within 1 month after Interroll has become aware of the defect, the Customer may extraordinarily terminate the contractual relationship without notice, regardless of the reason for the non-performance, but not in case of force majeure only.

(5) Interroll must demonstrate that he is not responsible for the reason for the delayed provision or the loss of service. If the Customer has not notified Interroll of the service failure, the Customer shall prove in the event of dispute that Interroll has otherwise become aware of it.

§ 5 Other services of Interroll

Further services of Interroll can be agreed upon in writing at any time, in particular training courses on ITRL-SOFTWARE. Such further services shall be provided against reimbursement of the proven expenditure at the prices of Interroll generally applicable at the time of the order.

§ 6 Rights of use of ITRL-SOFTWARE, rights of Interroll in case of exceeding the rights of use

(1) Rights of use of ITRL-SOFTWARE

   a) The Customer shall receive simple, non-sublicensable and non-transferable rights of use for the ITRL-SOFTWARE, limited to the term of this agreement, in accordance with the following provisions.

   b) There is no physical transfer of ITRL-SOFTWARE to the Customer. The Customer may use ITRL-SOFTWARE only for his own business activities.

   c) The Customer uses ITRL-SOFTWARE only by the agreed number of persons. If the ITRL-SOFTWARE is used by more than the agreed number of persons, this shall be subject to a charge; any further claims of Interroll in case of a quantitative additional use beyond the agreed use shall remain unaffected.

   d) The Customer is not entitled to make changes to the ITRL-SOFTWARE. This does not apply to changes which are necessary for the correction of errors, if Interroll is in delay with the correction of the error, refuses the correction of the error or is unable to correct the error due to the opening of insolvency proceedings.

e) If Interroll makes new versions, updates, upgrades or other new deliveries with regard to ITRL-SOFTWARE during the term of the contract, the above rights shall also apply to these.

f) The Customer shall not be entitled to any rights not expressly granted to the Customer above. In particular, the Customer is not entitled to use the ITRL-SOFTWARE beyond the agreed use or to have it used by third parties or to make the ITRL-SOFTWARE available to third parties. In particular, it is not permitted to duplicate, sell or transfer the ITRL-SOFTWARE for a limited period of time, and in particular not to rent or lend the ITRL-SOFTWARE.

(2) Obligations of the Customer for safe use

a) The Customer takes the necessary precautions to prevent the use of the ITRL-SOFTWARE by unauthorized persons.

b) The Customer is liable for the fact that ITRL-SOFTWARE is not used for racist, discriminatory, pornographic, youth protection endangering, politically extreme or otherwise illegal purposes or purposes that violate official regulations or requirements or that corresponding data, in particular application data, is created and/or stored on the server.

(3) Violation of the provisions of paragraphs 1 and 2 by the Customer

a) If the Customer violates the regulations in paragraph 1 or 2 for reasons for which he/she is responsible, Interroll can block the Customer's access to the ITRL-SOFTWARE after prior notification of the Customer if the violation can be demonstrably remedied by this.

b) If the Customer unlawfully violates paragraph 2 lit. b, Interroll is entitled to delete the data or application data affected thereby. In the case of an unlawful violation by users, the Customer must immediately provide Interroll on request with all the information required to assert claims against the user, in particular his name and address.
If the Customer continues to violate or repeatedly violates the regulations in paragraph 1 or 2 despite a corresponding written warning from Interroll, and if he is responsible for this, Interroll can terminate the contract extraordinarily without observing a period of notice.

c) For each case in which the Customer culpably enables the use of ITRL-SOFTWARE by third parties (or by users not named by the Customer), the Customer shall pay an immediately payable contractual penalty in the amount of the basic monthly lump sum. We reserve the right to claim damages; in this case the contractual penalty will be credited against the claim for damages.

(4) Rights of the Customer to any databases/databases created
If and to the extent that during the term of this contract, in particular by compilation of application data, through activities of the Customer permitted under this contract, a database, databases, a database work or database works are created on the server of Interroll, all rights thereto shall be vested in the Customer. The data from the databases will be handed over the customer after the end of the contract in accordance with §15. After that, the customer no longer has access to the databases and their data.

(5)   Open Source Software

a)   ITRL-SOFTWARE contains components that are licensed as Open Source Software (hereinafter referred to as "Open Source Components") and components that may be used exclusively under the license conditions in paragraph 1 (hereinafter referred to as "Proprietary Components"). The Open Source Components are listed with the relevant license texts. The Customer can view the copyright notices, license texts, disclaimers and any other notices in accordance with the applicable open source licenses in the menu of the application www.interroll.com.

b)   The Customer is also entitled to use the Open Source Components to the extent described in paragraph 1. The Licensee may acquire further rights of use in the Open Source Components from the respective rights holders if he concludes license agreements with them under the terms of the respective open source licenses. In this case, the use of the Open Source Components is not covered by this Agreement, but is governed solely by the respective open source licenses.

c)   The authors of the Open Source Components exclude their liability for the software they make available free of charge to a very wide extent. Interroll is obliged to clearly point out this exclusion of liability at this point. The Customer can find the exact text of the respective disclaimers in the license texts, which can be viewed in full text at www.interroll.com. The disclaimers only refer to the liability of the authors and contributors of the respective Open Source Components. Warranty rights of the Customer towards Interroll are not limited by these disclaimers.

d)   Interroll is entitled to check the compliance with the limits of the granted rights of use and the obligations arising from these Terms and Conditions of Use by means of appropriate measures on an annual basis (e.g. on-site inspections by arrangement during normal business hours and without unreasonably interfering with the Customer's business operations).

§ 7   Liability for third party rights

(1)   Interroll shall immediately inform the Customer of any rights of third parties or of the assertion of such rights and of any resulting impairment of the provision of agreed services and shall enable the Customer to have full access to the application data in a suitable manner.

(2)   If and to the extent that the rights of third parties affect the Customer's use of the ITRL-SOFTWARE, the Customer is not obliged to pay compensation.

(3)   A non-availability of the ITRL-SOFTWARE and/or the application data for legal reasons according to para. 1 is considered as non-availability.

(4)   As far as Interroll does not or no longer has the rights he needs to properly fulfill the contract, in particular the necessary rights of use for ITRL-SOFTWARE and documentation, and ITRL-SOFTWARE is not usable, § 4 para. 3 and 4 apply accordingly.

(5)   The contracting parties shall notify each other immediately in writing if claims are asserted against them.

(6) Interroll is not liable for an infringement of the rights of third parties by the Customer, if and to the extent that this infringement results from exceeding the rights of use granted under this contract. In this case, the Customer shall indemnify Interroll upon first request from all third-party claims.

§ 8   Remuneration

(1) Only the current prices specified in Interroll's offers and order confirmations apply. All prices are in Euro and exclusive of VAT. Unless otherwise stated, the prices - errors and misprints or typing errors excepted - refer to the respective products shown in the catalogues, advertisements and the website of Interroll according to the corresponding description.

(2) If a monthly basic lump sum has been agreed upon, it shall be due for each commenced calendar month from the date of operational provision. It shall be due in advance on the third last working day of the respective preceding calendar month. If the Customer has justifiably terminated the contract extraordinarily, the lump sum shall be repaid pro rata temporis. If an annual basic lump sum has been agreed upon, it shall first be due as of operational provision, if necessary pro rata, for the current calendar year, and thereafter for the following calendar year. These following basic annual lump sums are due in advance on the third last working day of the calendar year for the following calendar year. If the Customer has justifiably terminated the contract extraordinarily, the lump sum is to be repaid pro rata temporis.

(3) Interroll is entitled to increase the basic lump sum according to Paragraph 2 as well as any basic prices for a usage-based remuneration for the first time after the expiry of 1 year after the start of the contract with a written notice of 2 months to the beginning of the following month, if and insofar as his costs incurred for the proper execution of the contract have increased.

(4) The Customer has the right to terminate the contractual relationship in writing within a period of 1 month after receipt of the notification. Interroll will inform the Customer of this right of termination together with each announcement.

(5) Other services are provided by Interroll according to time and material at the general list prices of Interroll valid at the time of the order.

(6) Remuneration is owed plus VAT at the statutory rate applicable in each case.

(7) The payment of the remuneration is made on account using the payment methods offered on the website of Interroll. Interroll reserves the right to exclude certain payment methods. Interroll reserves the right to carry out a credit check when issuing an invoice. All claims are due upon receipt of the invoice and are payable without deduction.

§ 9   Duty and obligation of the Customer

The Customer shall fulfil all duties and obligations necessary for the execution of the contract. He

   1.   will in particular keep secret the usage and access authorizations assigned to him or the users as well as any agreed identification and authentication safeguards, protect

them from access by third parties and not pass them on to unauthorized users. This data must be protected by appropriate and customary measures. The Customer shall inform Interroll immediately if there is any suspicion that the access data and/or passwords may have become known to unauthorized persons;

2. is responsible in particular for creating the necessary conditions of use on the part of the Customer, in particular the access conditions agreed in § 2 (6), its own infrastructure and for the telecommunications connection between him and Interroll up to the transfer point. He shall comply with technical and organizational security standards in accordance with the state of the art and ensure that no viruses from his systems enter Interroll's systems;

3. will in particular comply with the restrictions/obligations with regard to the rights of use according to § 6, in particular

   a) if use is permitted only by so-called "named users", name all users intended to use the ITRL-SOFTWARE and make appropriate changes;

   b) not to retrieve or have retrieved any information or data without authorization or to interfere or have interfered with programs operated by Interroll or to invade or promote such an intrusion into data networks of Interroll without authorization;

   c) not to misuse the exchange of electronic messages possible within the scope of the contractual relationship and/or by using ITRL-SOFTWARE for the unsolicited sending of messages and information to third parties for advertising purposes;

   d) shall indemnify Interroll from claims of third parties which are based on an illegal use of the ITRL-SOFTWARE by Interroll or which result from data protection, copyright or other legal disputes caused by the Customer and which are connected with the use of the ITRL-SOFTWARE;

   e) shall oblige the authorized users to comply with the provisions of this contract that apply to them;

4. will in particular ensure that he respects all rights of third parties to the material he uses;

5. will in particular obtain the required consent of the respective person concerned according to § 10 para. 2, as far as he/she collects, processes or uses personal data when using ITRL-SOFTWARE and no legal permission is granted;

6. will in particular, if he transmits data to Interroll for the generation of application data with the help of ITRL-SOFTWARE, save this data regularly and according to the importance of the data and - as far as possible - create his own backup copies in order to enable the reconstruction of the data and information in case of loss.

§ 10 Data security, data protection

(1) The contractual partners shall observe the applicable data protection regulations, in particular those valid in Germany, and shall oblige their employees deployed in connection

with the contract and its execution to observe data secrecy, unless they are already generally obliged to do so.

(2) If the Customer collects, processes or uses personal data, he is responsible for the fact that he is entitled to do so according to the applicable, in particular data protection regulations and, in the event of an infringement, indemnifies Interroll from claims of third parties.

(3) The obligations under para. 1 to 2 shall continue to apply as long as application data are within Interroll´s sphere of influence, even after the end of the contract.

(4) All information on the processing of the personal data of the Customer by Interroll in the context of the use of the ITRL-SOFTWARE pursuant to Art. 13 et seq. DSGVO can be traced in the data protection regulations of Interroll.

§ 11 Confidentiality

(1) Confidential information shall be information expressly designated as confidential by the contracting party providing the information and such information whose confidentiality is clearly evident from the circumstances of the transfer. Interroll shall treat application data in particular as confidential, if he gains knowledge of them.
No information to be treated as confidential shall be deemed to exist if the contracting party receiving the information proves that it

- was known to him or generally accessible to him before the date of receipt;
- was known to the public or was generally accessible to the public before the date of receipt;
- became known or generally accessible to the public after the date of receipt, without the receiving Party being responsible for this.

(2) The contracting parties shall maintain secrecy about all confidential information that has come to their knowledge within the scope of this contractual relationship, or shall only use such information towards third parties - for whatever purpose - with the prior written consent of the other contracting party.

(3) Public statements by the contracting parties on cooperation shall be made only by prior mutual agreement.

(4) The obligations pursuant to para. 2 shall also continue to exist beyond the end of the contract for an indefinite period of time, namely for as long as an exceptional circumstance pursuant to para. 1 has not been proven.

§ 12 Contact person and escalation level

(1) The contracting parties shall each nominate in writing a main contact person for the purpose of channeling communication - in particular in the event of disruptions in the service structure - who can make legally binding declarations for the respective contracting party or can bring about such declarations within six working days after the main contact person of the other contracting party has informed him in writing of the facts of the case and the need for a decision.

(2) If no agreement is reached at the level of the principal contacts within twelve working days of notification of the facts and the need for a decision, the matter must be submitted without delay to the respective management of the contracting parties or the representatives appointed by them for a decision. This escalation level shall make a final decision within a period of a further twelve working days from receipt of the case.

(3) The escalation deadlines specified above shall not suspend any response, execution, recovery or other deadlines agreed in this Agreement including Annexes. However, before the escalation procedure has been completed, an extraordinary termination is generally ineffective if and to the extent that the termination is to be based on a disagreement of the contractual partners regarding the performance of the service.

§ 13 Liability, limitation of liability and contractual penalty

(1) The contracting parties shall be liable to each other without limitation in the event of intent or gross negligence for all damage caused by them and their legal representatives or vicarious agents.

(2) In the case of slight negligence, the contractual partners are liable without limitation in the event of injury to life, body or health.

(3) In all other respects, a contractual partner shall only be liable to the extent that he has breached a material contractual obligation. Essential contractual obligations are those obligations which are of particular importance for the achievement of the contractual objective and on which the contractual partner could rely, as well as all those obligations which, in the event of a culpable breach, could endanger the achievement of the contractual objective. In these cases, liability shall be limited to compensation for foreseeable, typically occurring damage up to a max. limited sum of € 2 million.

(4) The strict liability of Interroll for damages (§ 536a BGB) for defects existing at the time of conclusion of the contract is excluded; paragraphs 1 and 2 remain unaffected.

(5) Liability under the Product Liability Act and for guarantees remains unaffected.

§ 14 Term, termination

(1) The contractual relationship will remain in effect until the expiration, termination, or renewal of the ITRL-SOFTWARE, whichever is earliest.

(2) Extraordinary termination due to or in connection with a breach of duty is only possible after a prior written warning with an appropriate deadline of no less than 10 working days and after the agreed escalation procedure has been completed.

(3) If the party entitled to terminate the contract has been aware of the circumstances justifying the extraordinary termination for more than 20 working days, it can no longer base the termination on these circumstances.

(4) Notwithstanding the provision in para. 3, Interroll may terminate the contract without notice, if the Customer is in default of payment of the prices or a significant part of the prices for two

consecutive months or, in a period extending over more than two months, in default of payment of the fee in an amount equal to the fee for two months. In this case, Interroll can additionally demand a lump-sum compensation due immediately in one sum amounting to one quarter of the basic monthly lump sum remaining until the end of the regular contract term. The Customer reserves the right to prove that the damage is less.

§ 15 Duty at and after termination of the contract

Upon termination of the contractual relationship, Interroll shall be obliged to make the application data stored by the Customer and, if applicable, other data stored on the mass storage device provided pursuant to § 2 para. 4 available to the Customer on readable mobile and audit-proof data carrier in a standard data format.
In addition, Interroll is obliged, at the request of the Customer, to make all data stored by the Customer available to a third party named by the Customer on a standard data carrier or by means of remote data transmission or to delete such data at the request of the Customer. The Customer is obliged to reimburse Interroll for the necessary and proven costs incurred.

§ 16 Force majeure

(1) Neither party is obliged to fulfil its contractual obligations in the event of and for the duration of force majeure. In particular the following circumstances are to be regarded as force majeure in this sense:
- fire/explosion/flooding for which the contractual partner is not responsible,
- War, mutiny, blockade, embargo,
- industrial action lasting over 6 weeks and not culpably brought about by the contractual partner,
- technical problems of the Internet that cannot be influenced by a contractual partner; this does not apply if and insofar as Interroll also offers the telecommunication service,
- Pandemics, epidemics.

(2) Each contracting party must inform the other party in writing without delay of the occurrence of a case of force majeure.

§ 17 Final provisions

(1) The contractual relationship shall be governed by German law to the exclusion of its conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods.

(2) Annexes, as amended from time to time, i.e. signed by both parties, form an integral part of this contract.

(3) There are no ancillary provisions outside this Agreement and its annexes. Amendments or supplements to this contract and the annexes must be made in writing to be effective. This also applies to the waiver of the requirement of the written form.

(4) The possible invalidity of individual provisions of this contract does not affect the validity of the remaining contract content.

(5) If gaps arise in the practical application of this contract which the contracting parties have not provided for, or if the ineffectiveness of a provision within the meaning of para. 4 is legally established or if both contracting parties agree on it, they shall undertake to fill or replace this gap or ineffective provision in a factual and reasonable manner oriented to the economic purpose of the contract.

(6) The exclusive place of jurisdiction is the district court responsible for Hückelhoven, unless a standard mandatorily prescribes a different place of jurisdiction.