

Legal classification: Confidential

Master Service Agreement

hereinafter **Agreement**

The terms and conditions of this Agreement entered into by and between Parties, attached and / or incorporated by reference, are part of an agreement entered into by Transporeon GmbH (hereinafter **Service Provider**) as stated in the Statement of Work or other offer or order form and the Party executing this Agreement as **Customer** (hereinafter both also individually as **Party** or collectively as **Parties**).

This document is confidential. It may not be disclosed to third parties or otherwise made publicly available unless Service Provider expressly agrees to such disclosure.

Security classification: Protected

TRANSPOREON
transforming transportation

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Exhibit 1: Accession Agreement (Standard Contractual Clauses) (if applicable)

Master Service Agreement

Definitions

Access Data	Customer number, User name or e-mail address and password
Accession Agreement	Declaration of compliance with or declaration of accession to the Standard Contractual Clauses of Customer, Customer's Affiliates and/or Establishments domiciled outside the European Economic Area (Exhibit 1 to this Agreement)
Affiliate	Any legal entity that directly or indirectly controls, is controlled by or is under common control with another party; for these purposes, "control" means ownership of more than 50% of shares or being entitled to appoint the board of directors of a legal entity
Availability Description	Description of availability and performance parameters of Platform and other service level Services
Carrier	A company that receives a transport order from a Shipper and is responsible for carrying it out; Carrier includes, but is not limited to, a supplier (hereinafter Supplier) from which Shipper orders the goods or a logistics provider of Shipper or any other party to which Carrier subcontracts the transport order by forwarding the transport order via Platform
Change Request	Customer's request to change the initial scope of Services already defined in the respective Statement of Work and to perform the scope analysis with regard to such Change Requests by Service Provider
Cloud Service	The features of Platform including regular new releases, versions, updates, upgrades and standard support (helpdesk), as set out in the Statement Of Work
Confidential Information	Non-public information in any form provided to Receiving Party by Disclosing Party, including but not limited to Access Data, data stored on Platform, data relating to other companies, orders and offers, trade and industrial secrets, processes, intellectual property, financial or operational information, price or product information or related documentation
Contact Data	Company name, address, invoicing address, VAT No. as well as authorised signatory including name, surname, e-mail address and job title
Customer Data	All data of Customer stored on Platform or generated on the basis of Platform, in particular data in connection with Customer's transports (e.g. transports, routes, transport routes, offers, prices, transport documentation) and data on the use of Platform by Customer's Users
Data Protection Officer	Data Protection Officer can be contacted via post under the keyword "Data Protection Officer" to the above-mentioned address or via e-mail to dataprotection@transporeon.com
Data Subject	Any identified or identifiable natural person
Deliverables	Any results obtained or developed in connection with this Agreement and the provision of Services after Effective Date and before Go-Live e.g., but not limited to Customer-specific developments that can only be used in connection with access to Platform
Disclosing Party	Any Party disclosing Confidential Information
Effective Date	Date upon which this Agreement enters into force, given on the cover page of this Agreement
Establishment	A branch, agency or any other establishment of Customer that implies the effective and real exercise of activity through stable arrangements
Go-Live	The date agreed between Parties for the productive start of Customer's activity on Platform
Implementation Phase	The time period between the start of implementing the agreed Services and Go-Live of Customer
Intellectual Property	Any patents, designs, models, drawings, copyrights, software and database rights, trade marks, know-how, web domain names, company names and in general all rights of a same or similar nature, whether registered or unregistered anywhere in the world including all extensions, reversions, revivals and renewals thereof

Local Subsidiaries	Service Provider's Affiliates which also could act as Service Provider depending on Services offered are listed under following address: https://legal.transporeon.com/transporeon_entities.pdf
Platform	Cloud-based communication and transaction platforms operated by Service Provider for commercial customers (business to business)
Platform User Agreement	Terms and conditions provided by Service Provider as a contractual basis for use of Platform by Carriers
Price Index	Harmonised Index of Consumer Prices HICP - All items index (2015=100) European Union (EC6-1972, EC9-1980, EC10 1985, EC12-1994, EU15-2004, EU25-2006, EU27), published monthly by Eurostat
Professional Services	Services, particularly consulting, customisation, implementation, training and other services for the performance of contractual services as set out in Statement Of Work particularly in relation to the provision of Platform and any changes hereto
Project	Realisation of Services and fulfilment of obligations as agreed upon this Agreement
Receiving Party	Any Party receiving Confidential Information
Service Partner	Any party acting as sub-contractor of Service Provider and which has been denominated in writing or by other suitable means by Service Provider to Customer as "Service Partner" or listed under https://legal.transporeon.com/transporeon_service_providers.pdf
Services	Professional Services, Cloud Services or other services provided by Service Provider as stipulated in Statement of Work
Shipper	A producer, distributor or recipient of goods; Shipper issues transport orders
Standard Contractual Clauses	Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council - MODULE ONE: Transfer controller to controller
Statement Of Work	An agreement referring to this Agreement, including its exhibits and additional agreements between Parties defining the detailed performance specifications and corresponding conditions
System Specification	Description of the scope of Services, including specific Customer requirements and requirements to be met by Customer to enable the implementation of Project
Third Party	Any person or entity other than Parties and their Affiliates
User	A natural person authorised by Customer and confirmed by Service Provider or Service Provider's Affiliates, who is allowed to access Platform by using Access Data assigned to this person

Preamble

Customer uses logistics services provided by logistics service providers or Carriers to transport his goods. The increase in efficiency of the logistics processes of Customer is essential here. For this purpose, Service Provider provides a range of services, which optimise the entire logistics process chain through digitalisation, among other things.

1. Contractual relationships and components

1.1. Contractual relationships

This Agreement constitutes the legal framework for the cooperation of Parties.

The contractual relationship between Customer and Service Provider is defined by the corresponding Statements Of Work, which

- (a) contain a detailed description of such Services and
- (b) set out, together with this Agreement, the provisions of Services particularly in relation to Professional Services and Cloud Services.

1.2. Contractual components and contradictions

- (a) This Agreement including its exhibits – even if not referred to literally for reasons of readability – and the corresponding Statements Of Work are valid side by side. They regulate the contractual relationship between Parties conclusively. In case of doubt

or contradiction, the provisions of the respective Statement Of Work shall prevail over the provisions of this Agreement, insofar as a deviation from this Agreement is expressly agreed in Statement Of Work.

- (b) Following exhibits are integral part of this Agreement:
- Exhibit 1: Accession Agreement (Standard Contractual Clauses) (if applicable)

2. Provision of Services

2.1. General

2.1.1. Provisions

Service Provider renders Services according to the contractually agreed provisions and in line with the state of the art at the time of conclusion of this Agreement.

2.1.2. No freight contract

Service Provider shall not become a party to any agreement between Shipper and Carrier. Consequently, incorrect performance or non-performance of any contract concluded via Cloud Services does not have any impact on Parties' obligations under this Agreement.

2.1.3. Statistics

When offering Cloud Services, Service Provider processes transport-related data (including but not limited to transports, routes, offers, transport documentation) for the purpose of providing Services. Furthermore, Service Provider uses these data in anonymised form for statistics particularly in the Transport Market Monitor/Transport Market Radar.

2.1.4. Affiliates' access

- (a) Service Provider hereby offers Services also to Customer's Affiliates.
- (b) Customer shall ensure that Customer's Affiliates who wish to use Services are provided with a copy of this Agreement sufficiently in advance. This Agreement applies to Customer's Affiliates analogously unless otherwise stipulated in this Agreement. This shall also apply if Customer's Affiliates are not explicitly named in the wording of this Agreement.
- (c) Customer hereby declares in the name and on behalf of all its Affiliates that they fully agree with the provisions set out in this Agreement and in the corresponding Statement Of Work and that Customer's Affiliates will not re-negotiate these provisions with Service Provider, so that all of Customer's obligations shall also apply for Customer's Affiliates, as if they already now were a Party to this Agreement. On that basis, Customer's Affiliates shall have the right to access and use Cloud Services or other Services of Service Provider, both in Customer's name and their own name.

2.1.5. Authorisation

- (a) Customer confirms that it is entitled to fully represent its Affiliates and to establish the rights and obligations of its Affiliates under this Agreement.
- (b) Customer shall be liable for its Affiliates for all contractual obligations under this Agreement and the corresponding Statement Of Work.

2.1.6. Right of action

Notwithstanding any provisions to the contrary, Parties agree that only Customer is entitled to make any claims against Service Provider itself and/or on behalf of its Affiliates based on this Agreement or the corresponding Statement Of Work. Customer shall ensure that none of its Affiliates will make such claims against Service Provider directly.

2.1.7. Establishment outside EEA

If a Customer's Affiliate or Establishment is located outside of the European Economic Area, such Affiliate or Establishment is obligated to sign Accession Agreement prior to its access to Platform.

2.1.8. Business purpose

Customer undertakes to use Platform and Services of Service Provider solely for its own business purposes in accordance with this Agreement and the respective Statement Of Work.

2.1.9. Deadlines

- (a) Parties shall agree on any binding deadlines for Services in the corresponding Project Plan or Statement Of Work.
- (b) The deadlines shall be extended by the period of time during which Service Provider is prevented from providing Services due to circumstances beyond its control (e.g. force majeure) as well as a reasonable start-up time after elimination of this obstacle. After termination of an event of force majeure, Service Provider shall notify Customer of the expected new deadlines for Services without undue delay. The same applies to any period during which Customer does not fulfil its cooperation obligations or delays their fulfilment.
- (c) If mutually agreed deadlines have to be changed due to Customer's fault and such change results in additional costs, Service Provider may invoice these costs as additional effort based on the prices for affected Services as stipulated in the corresponding Statement Of Work to the defaulting Customer. Service Provider will inform Customer in a timely manner in this case.

2.2. Cloud Services

2.2.1. Rights of use

Service Provider grants Customer access to Platform and to Cloud Services for the duration defined in the respective Statement Of Work. If applicable for Services defined under the respective Statement Of Work, Customer initially defines which of its Carriers shall be activated for the work with Customer on Platform for Cloud Services. Notwithstanding the foregoing, Service Provider will only activate Carriers that concluded a separate Platform User Agreement with Service Provider for the usage of Cloud Services.

2.2.2. Service Partners

Service Provider shall be allowed to integrate services rendered by Service Partners and other Third Parties in Cloud Services in its own Services and to work with other subcontractors in this context.

2.2.3. Restrictions on use

- (a) Customer is prohibited to circumvent Platform or Cloud Services in order to avoid or reduce the payment of any fees. If Customer culpably causes damage to Service Provider by such circumvention or attempted circumvention, Customer shall be liable for the damage resulting therefrom including all the fees that would have been due if Customer would not have circumvented or attempted to circumvent Platform or Cloud Services. The latter does not hinder Customer to optimise its logistic processes outside Platform. The circumvention includes, particularly, gathering information on Platform for subsequent conclusion of a transport contract
 - (i) by other means than via Platform (e.g. by telephone or e-mail), or
 - (ii) by other Cloud Services of Platform or third-party applications, or
 - (iii) by combination of different Cloud Services of Platform.
- (b) Customer may not use Platform for illegal agreements among competitors, circumvention of any embargoes or any other illegal activity. This also applies to attempting and to supporting such usage.
- (c) Customer agrees not to enter information or data into Platform that could harm, interrupt or improperly access Platform, other computer programs, systems and information.
- (d) Customer may not use Platform for any purpose that is racist, discriminatory or obscene or in any other way infringing anybody's rights. Customer will not use or save such infringing data on Platform.
- (e) Customer is not entitled to grant unauthorised Third Parties access to Cloud Services, neither for a fee nor free of charge. Service Provider also reserves the right to block the access of Carriers in the event of breaches of their obligations under the Platform User Agreement or to exclude them from using Platform permanently.
- (f) Customer may not use any of the data made available through Platform or gained through Platform usage for the development, production or provision of any own product (e.g. geographical maps) or translate, edit, change or otherwise arrange the data for these purposes. This shall also apply to the use of such data and the results obtained by using this data. This does not apply to information and data provided exclusively by Customer. It is prohibited to systematically read out / retrieve data from Platform or to pass on or process the software or data received through Platform to unauthorised third parties.

- (g) Any data and software made available through Platform, particularly map data and other geographical data, are protected by copyright or otherwise as the case may be. All rights to such data and software are exclusively reserved to Service Provider or Service Partners. Copyright notices and brand names may not be changed or removed.

2.2.4. Access Data and system requirements

- (a) Customer will have access to Platform by way of its Access Data and subject to being able to meet the system requirements as described under <http://www.transporeon.com/en/system-requirements/> and updated from time to time.
- (b) Customer undertakes to keep its Access Data confidential.

2.2.5. IT security

- (a) When using Platform, Customer is obliged to refrain from carrying out or attempting the following actions:
- (i) upload any information, data or files to Platform that could harm, interrupt or compromise the integrity or performance of Platform or its availability,
 - (ii) gain unauthorised access to Platform or the related systems, networks, computers, programs or information,
 - (iii) mirror, decompile, reassemble, frame or otherwise convert or translate Platform into a generally readable form,
 - (iv) access Platform in order to build a competitive product or service or to use for benchmark purposes.
- (b) Customer has the obligation to deactivate those of its Users that are not allowed anymore to use Platform on its behalf due to e.g. termination of employment agreement ("User Management").
- (c) Service Provider has a disaster recovery plan in place in order to ensure security and continuity of the business.

2.2.6. Infringement and consequences

- (a) In case of a breach of the obligations set out in 2.2.3 (Restrictions on use) or 2.2.5 (IT security), Service Provider and each of Service Partners (by way of a contract for the benefit of a third party – "echter Vertrag zugunsten Dritter") shall have the right to request that any such breach is immediately ceased and that damages caused by such breach shall be fully compensated.
- (b) Without prejudice to any other right or remedy that Service Provider may have, Service Provider may, after providing a prior notice of 14 days, and the unsuccessful cure of the breach, block Customer's or Customer's single User access to Platform if Customer knowingly breaches its obligations set out in 2.2.3 (Restrictions on use) or 2.2.5 (IT security) or in case of a payment default. The same applies if Customer's User knowingly assists other Users in such breach.
- (c) In making the decision of Platform blocking due to the breach of the obligations set out in 2.2.5(a) (IT security) or 2.2.5(b) (IT security), Service Provider will take into account the legitimate interests of Customer to a reasonable extent. Service Provider will inform Customer about the blocking of its access and the blocking or deletion of its data by e-mail. This clause can be subject to dispute resolution depending on the severity of the infringement.

2.2.7. Support and maintenance

As part of Cloud Services and at no additional cost, Service Provider will render to Customer support and maintenance Services as described in Statement Of Work.

2.3. Professional Services

2.3.1. Acceptance

- (a) Customer shall accept Services when Service Provider has essentially rendered Services in a correct and complete manner as well as free of defects. Acceptance may not be refused by Customer by reason of trivial defects. The acceptance testing has to be carried out within the period agreed by Parties or – if no such agreement has been reached – within 14 days, upon Service Provider's request. Acceptance shall be declared in writing or via e-mail.
- (b) Acceptance of Services shall also be deemed to have been declared if Customer expresses its approval of Services in some other manner, e.g. by using Services in productive operations or by failing to reply to a request for acceptance by Service Provider within reasonable time (in the absence of agreement, longer than 14 days) or accepting the (partial) Service by the corresponding payments in accordance with Statement Of Work.
- (c) Service Provider may demand that Customer accepts definable components of Services that can be independently assessed and tested without the remaining parts (partial acceptance). By making such partial acceptance, Customer accepts the respective part of Services concerned. Subsequent acceptance procedures will only determine whether the accepted component of Services works

in conjunction with Services in other areas of Project. The outcome of the final acceptance procedure does not affect any partial acceptance.

2.3.2. Change Requests

- (a) During Implementation Phase, Customer may request changes and additions to the scope of Services in writing or via e-mail. Service Provider may decline to carry out Customer's request, particularly if it is unreasonable or not practicable from Service Provider's view.
- (b) Subject to prior informing Customer by Service Provider, Service Provider will charge Customer the actual incurred costs for time spent analysing a Change Request and drafting a follow-up Statement Of Work at the valid prices for Services based on time and material, especially if Customer decides not to implement the required change. Service Provider may also demand separate payment of the cost of any idle time caused by Customer due to its Change Request. Unless otherwise agreed in the respective Statement Of Work, the deadlines agreed for Services will be extended by the period of time on which Services had to be interrupted due to Change Request, as well as by a reasonable start-up period.

2.3.3. Cooperation obligations

- (a) Customer shall promptly
 - (i) provide Service Provider with all information required to perform Services,
 - (ii) examine the results of Services without any delay and
 - (iii) immediately report in writing or via e-mail any disruptions or defects with a description of all details necessary for Service Provider to remedy the defect.
- (b) Customer shall support Service Provider in providing Services in a timely manner and free of charge to the extent necessary to provide Services. This includes particularly providing data, relevant staff and cooperating by creation of specifications and testing to the extent necessary to provide Services.
- (c) If Customer does not fulfil its cooperation obligations which are necessary for the provision of Services, Service Provider is entitled to discontinue performance of Services and demand reasonable compensation. Any further statutory rights and obligations of Parties in such case remain unaffected.

3. Fees and payment

3.1. Invoicing

Depending on Services that Customer receives, Customer will conclude in each case a separate corresponding Statement Of Work and will receive thereby separate invoices.

3.1.1. Bank transfer

Customer shall pay to Service Provider the fees stipulated in the respective Statement Of Work via bank transfer, unless otherwise agreed in such Statement Of Work.

3.1.2. Extra expenses

Customer shall bear all costs connected with the payment including any bank fees or currency exchange losses.

3.1.3. VAT

The prices set out in the Statements Of Work do not include VAT. If Customer is established in Germany, Service Provider charges the fees plus VAT. If Customer is not established in Germany, Services are considered "other services" and are not subject to VAT in Germany in accordance with the Art. 56 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. The recipient of performance owes the VAT (reverse tax obligations – "reversed charge").

3.1.4. Delay of payment

- (a) If Customer does not pay the fees in time or full, Service Provider may charge dunning fees and default interest on the overdue amount at the rate according to applicable law.
- (b) Service Provider reserves the right to claim further damages in relation to such default delay.
- (c) If Customer is in default with any payment, Service Provider reserves the right to block Customer's access to Platform.

- (d) Service Provider will notify Customer in writing or via e-mail at least 14 calendar days in advance before any such blocking of Customer's access occurs.
- (e) Any further rights according to the applicable law arising from, in particular, default delay remain unaffected.

3.1.5. Objections

Incorrect performance or non-performance by Carrier of any contract concluded between Customer and Carrier via Cloud Services does not release Customer from its payment obligation towards Service Provider.

3.1.6. Off-set

Customer may only offset claims that have been recognised by Service Provider, have been legally established (declared "*res judicata*") or are counterclaims from the same contractual relationship.

3.2. Adjustments of fees

3.2.1. Cloud Services fees

- (a) Service Provider is entitled to adjust its fees for Cloud Services in relation to the development of Price Index on a yearly basis by notifying Customer of such adjustment. Generally, Service Provider makes the adjustment (i.e. increase or decrease according to the development of Price Index) at its reasonable discretion and at the end of a calendar year for the future. The adjustment is done by comparing the average Price Index for the current year with the average Price Index for the year in which the last adjustment took place. If Service Provider does not make adjustments in a year, Service Provider is entitled to make an adjustment comprising all changes of Price Index since the last fee adjustment.
- (b) If Eurostat ceases to publish Price Index or makes significant changes to its content and format, Service Provider will take a comparable index at least once a year as a basis for calculation of adjustments and inform Customer about it in writing or via e-mail.
- (c) Each fee adjustment will only apply to transactions made after the effective date of the adjustment.
- (d) Service Provider will inform Customer about any fee adjustment in advance in writing or via e-mail.
- (e) This section only refers to the fees charged directly to Customer.

3.2.2. Professional Services fees

Service Provider reserves the right to adjust the fees for Professional Services or its other Services at its own discretion. Such adjustment will take place only for future orders of Professional Services or other Services of Service Provider and will be announced prior the respective order in the fee estimate.

4. Service levels

4.1. Availability; support; remedies

4.1.1. Performance

Service Provider will perform Services taking into account the recognised rules of technology

- (a) with promptness and diligence and in a workmanlike and professional manner and
- (b) in accordance with all applicable service levels stipulated in Availability Description.

4.1.2. Availability; support; remedies

The availability of Platform, the support times and the remedies for failure to achieve the availability of Platform are defined in Availability Description available under <https://www.transporeon.com/en/avd/> and incorporated into this Agreement by reference.

5. Deliverables

5.1. Professional Services and consulting Services

Service Provider is responsible for ensuring that Deliverables developed in connection with provision of Services

- (a) meet the descriptions and specifications set forth in the relevant Statement Of Work and System Specifications,
- (b) are free of significant defects and
- (c) are delivered on or before any due or delivery dates set forth in the relevant Statement Of Work or Project Plan.

5.2. Cloud Services

Deliverables which suit as a basis for the provision of Cloud Services are stipulated in the respective Statement Of Work or the System Specifications.

6. Ownership and IP rights

6.1. Professional Services, Cloud Services and other Services

- (a) All Intellectual Property rights acquired before Effective Date and belonging to Service Provider or Service Partners shall remain the sole property of Service Provider or Service Partners, respectively.
- (b) Intellectual Property created, acquired or developed in connection with this Agreement and Statement Of Work shall remain solely with Service Provider or Service Partners.

6.2. Deliverables

- (a) Service Provider hereby grants Customer (present and future) rights of use to Intellectual Property associated with Deliverables, to the extent defined in this Agreement or the respective Statement Of Work, in terms of content and time.
- (b) All Intellectual Property rights related to Deliverables shall remain the sole property of Service Provider or Service Partners, as the case may be. A commercialisation or imitation of Intellectual Property of Service Provider or Service Partners (particularly by way of so-called "reverse engineering") as well as the registration of industrial other intellectual property rights (particularly, trademarks, designs, patents or utility models) by Customer, its Affiliates or by Third Parties are prohibited.
- (c) Should Parties together develop Intellectual Property, the rights thereto will be agreed in a separate agreement.
- (d) All research or development activities are conducted under a separately negotiated research or development agreement, and any mutually developed Intellectual Property as well as the rights thereto shall be governed by such an agreement.

7. Term and termination

7.1. Term and termination for convenience

7.1.1. Term

Each Party may terminate this Agreement or any Statement Of Work at any time subject to a 90-days' notice period as per the end of a calendar month. This does not apply if Statement Of Work has a specific validity period or a termination period deviating from this clause.

7.1.2. Termination before completion

If Service agreed in a Statement Of Work represents a contractual work service, Customer may terminate this Statement Of Work prior to the completion of Service without any termination notice, if the pursuit of the completion of Service is economically unreasonable for Customer. In this case, Service Provider is entitled to charge the agreed fees for Services provided up to that point. Any further statutory rights and obligations of Parties in case of such termination remain unaffected.

7.2. Termination for good cause

7.2.1. Good cause

- (a) Service Provider may terminate this Agreement for good cause with immediate effect in writing, if Customer breaches the obligations as stipulated in 2.2.3 (Restrictions on use) or 13 (Compliance).

- (b) Any further rights of Parties to terminate this Agreement for good cause shall remain unaffected.
- (c) In case of termination for good cause, Service Provider reserves the right to block Customer's access to Platform immediately.

7.3. Consequences

7.3.1. Termination of Master Service Agreement

The termination of this Agreement results in an automatic termination of all Statements Of Work relating hereto. However, Service Provider's rights stipulated in 7.1.2 (Termination before completion) shall remain unaffected. Notwithstanding the foregoing: if a Statement Of Work has a specific validity period, this Agreement shall remain in force relating to the respective Statement Of Work until the end of its specific validity period.

7.3.2. Termination of Statement Of Work

A termination of a Statement Of Work does not affect this Agreement and other Statements Of Work relating hereto.

8. Confidentiality

8.1. Disclosure restrictions

- (a) Receiving Party must not make any of Disclosing Party's Confidential Information available in any form, to any Third Party, natural person or legal entity other than Receiving Party's employees, Affiliates or agents with a need to know such Confidential Information. In this case, Receiving Party shall ensure that all such Receiving Party's employees, Affiliates or agents shall be bound by the confidentiality obligations offering no less than the same level of protection as stipulated in this Agreement.
- (b) Any unauthorised disclosure or use of Confidential Information by Receiving Party's employees, Affiliates, subcontractors or agents shall be deemed a breach of this Agreement by Receiving Party. In this case, Receiving Party shall be liable to Disclosing Party to the same extent as if Receiving Party committed such breach itself.

8.2. Reasonable care

Receiving Party will keep Confidential Information secret by using at least the same care and discretion that Receiving Party uses with respect to its own trade secrets and in no case less than reasonable care.

8.3. Exceptions of confidentiality

Confidential Information does not include information that

- (a) was known to Receiving Party prior to its disclosure by Disclosing Party,
- (b) has become generally available to the public (other than through Receiving Party),
- (c) is obtained by Receiving Party from a Third Party under no obligation of confidentiality to Disclosing Party.

8.4. Disclosure permissions

Receiving Party may disclose Confidential Information if such disclosure is required according to applicable laws or governmental regulations, provided that Receiving Party has previously notified Disclosing Party of the disclosure by e-mail in parallel with the written notice and has taken reasonable and lawful actions to avoid and minimise the extent of the disclosure.

8.5. Survival and replacement

The provisions of 8 (Confidentiality) shall supersede and invalidate all other confidentiality and non-disclosure agreements, whether stipulated in text, in writing or orally, which Parties previously concluded. Furthermore, the provisions of 8 (Confidentiality) shall survive the termination of this Agreement for a period of 5 years from the date of effective termination of this Agreement.

9. Data protection and data security, Customer Data

9.1. Processing of personal data

9.1.1. Compliance with laws

Service Provider and Customer shall comply with any laws and regulations in any relevant jurisdiction relating to data protection or the use or processing of personal data.

9.1.2. Processing of personal data

- (a) Service Provider determines the purposes and means of processing personal data within the scope of Services provided under this Agreement and thus acts as an independent controller.
- (b) The details on the processing of personal data (Privacy Notice) can be found on the login page of Platform in the footer or online at https://legal.transporeon.com/DP/PLT/en_Platform_Privacy_Policy.pdf.

9.1.3. Processing for product information

Service Provider processes the full name, the position and the business contact details of Customer's employees and representatives for product information and customer relationship purposes according to Art. 6 Para. 1 (f) GDPR.

9.2. Obligations under data protection law

9.2.1. Provision of personal data

- (a) Customer shall provide Service Provider with the personal and non-personal data required for the performance of Services under this Agreement. This includes in particular the personal data mentioned in the Privacy Notice (see 9.1.2(b) (Processing of personal data)).
- (b) The data may be either provided directly by Customer or by Data Subjects at the instigation of Customer.
- (c) Customer will ensure that the personal data provided is limited to the required minimum (principle of data minimisation).

9.2.2. Information of Data Subjects

- (a) Customer shall provide any Data Subjects, whose personal data are transferred to Service Provider, with comprehensive and correct information pursuant to Art. 13 and Art. 14 GDPR about the processing of their personal data for the purposes of this Agreement in a concise, transparent, intelligible and easily accessible form, using clear and plain language.
- (b) Customer shall also inform Data Subjects about their rights according to Chapter III of the GDPR. These rights may include, in particular, the right of access, the right to rectification, the right to restriction of processing and the right to object.
- (c) These information obligations can be fulfilled by Customer – if not already known to Data Subjects – by providing the Privacy Notice (see 9.1.2(b) (Processing of personal data)) of Service Provider.

9.2.3. Lawfully processing

- (a) Customer warrants that any personal data provided directly by Customer or by Data Subjects at the instigation of Customer may be lawfully processed by Service Provider and Local Subsidiaries for the purposes of this Agreement.
- (b) Customer is familiar with the laws and regulations contained in or deriving from the relevant jurisdiction regarding data protection or the use or processing of personal data relating to Services under this Agreement.
- (c) Customer shall in particular use this personal data for monitoring the behaviour or the performance of Data Subjects only to the extent permitted by mandatory laws, collective agreements or employment contracts.

9.3. Anonymised use of Customer Data

- (a) Customer hereby grants Service Provider the free, simple (non-exclusive), worldwide, temporally unlimited and irrevocable right to store, process, link, evaluate, analyse, pass on, publish and economically exploit Customer Data in anonymised form (within the meaning of 9.3(c) (Anonymised use of Customer Data)). This granted right includes in particular the right to use and commercially exploit the data for error correction as well as for the improvement of own or third-party products (including services), for the development of new products, for benchmarks as well as for advertising, scientific or statistical purposes.

- (b) The right of use granted is transferable and sub-licensable by Service Provider to Service Partners and Affiliates.
- (c) Usage in anonymised form means that the data to be exploited is changed in such a way that it can no longer be related to (i) a single natural person, in particular Users or employees of Customer, (ii) Customer, (iii) a Shipper or (iv) a Carrier, e.g. by aggregation (summary). In order to determine whether a reference is possible, all means that are likely to be used by Service Provider or a Third Party, according to general judgment, to directly or indirectly identify a reference object must be considered.
- (d) Insofar as the use of Customer Data for the above-mentioned purposes does not serve to provide the contractual services and represents a processing of personal data (in particular the process of anonymisation), Service Provider does not act as a processor on behalf of Customer, but as an independent controller.

10. Warranty

10.1. Product description / system specification

- (a) Product descriptions shall not be deemed guaranteed unless separately and explicitly agreed in writing.
- (b) In particular, a functional impairment resulting from hardware defects, environmental conditions, wrong operation, defective information, data or other circumstances originating from Customer's or its Affiliates' sphere of risk does not constitute a defect.

10.2. Software defects

10.2.1. Remedy

- (a) Service Provider remedies software defects at its option by providing a new version of Platform or by indicating reasonable measures to reduce or avoid the effects of the defect.
- (b) Defects must be notified in writing with a comprehensible and detailed description of the causes of the defects, and as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects.
- (c) The notification of defects shall be made in a form that enables Service Provider to reproduce the defect.
- (d) Service Provider may refuse to remedy defects until Customer has paid the agreed fees to Service Provider less the amount that corresponds to the economic value of the defect.

10.2.2. Investigation

- (a) If the cause of the defect is not obvious to Customer, Service Provider will investigate the cause.
- (b) Service Provider may demand compensation for such investigation on the basis of its fees per hour valid at the time of the investigation if Service Provider is not responsible for the defect, in particular, if the defect is due to Customer's usage of unsuitable hardware or externally obtained components, or to Customer's interference.

10.3. Unauthorised modifications

- (a) In case of any unauthorised modifications to Services or Platform by Customer or any Third Party acting on its behalf, any warranty claims are excluded, unless Customer proves that such modification had no influence on the defect.
- (b) Service Provider is not liable for any defects that are caused by improper use or improper operation by Customer or the use of unsuitable means of operation (e.g. the use of non-supported hardware or operating systems).

10.4. Performance agreed

- (a) Service Provider shall not become a contractual party to the contracts between Customer and other Users.
- (b) Service Provider is not responsible for ensuring that every offer of Customer is accepted by other Platform Users or that a contract will be concluded between Customer and other Users.
- (c) Service Provider is not responsible for the provision of any performance contractually agreed between Customer and other Users.

10.5. Accuracy and correctness

- (a) Service Provider is not responsible for the accuracy and correctness of the data that Customer or other Users enter or provide when using Platform.
- (b) Service Provider is solely and exclusively responsible for the accurate calculation of the results based on the provided information and for the correct data transmission.

10.6. Reliability of Users

Service Provider gives no warranty as to the reliability of other Users.

11. Insurance

Service Provider undertakes to maintain an adequate insurance for IT companies at its own costs for the period of this Agreement. Service Provider will provide Customer with the corresponding insurance certificate upon request.

12. Liability

12.1. General

- (a) The contractual and legal liability of Service Provider is limited to intent and gross negligence.
- (b) In the event of ordinary negligence (“leichte Fahrlässigkeit”), the liability of Service Provider shall be limited to the breach of material contractual obligations (“Kardinalspflichten”), i.e. contractual obligations fulfilment of which is essential for the proper performance of the contract and the compliance with which Customer regularly relies on and may rely on. The liability of Service Provider for indirect damages, such as in particular lost profit, is excluded. The liability of Service Provider is limited to the compensation of the contract-typical and foreseeable damage.
- (c) In the event of a claim by Service Provider, contributory negligence on the part of Customer must be taken into account appropriately, in particular in the event of late or insufficient cooperation, error messages or inadequate data backup. In addition, Service Provider points out that despite compliance with the care required in trade and the state of the art, operational errors in the software cannot be technically excluded.

12.2. Data and links

- (a) Customer is aware that Service Provider has not created or examined the data transmitted via Platform or any links created by other Users. Therefore, Service Provider is not liable for such data and links, their legality, completeness, accuracy or up-to-date nature, nor for such being free of any Third Party’s Intellectual Property rights.
- (b) Service Provider is not liable for damages arising from downloading or another use of unchecked harmful data via Platform or links of other Users.

12.3. Loss of data

Customer is advised that the storage of data on Platform serves exclusively and primarily the purpose of providing Cloud Services. Proper keeping and storage of books, records and documents is not guaranteed by the use of Platform and is the sole responsibility of Customer. Service Provider’s liability for data loss shall be limited to the typical recovery costs that would have been incurred if backup copies had been made on a regular basis and in such a way as to be susceptible to risks. Liability shall only exist if Customer has ensured through appropriate data backup measures that the data can be reconstructed with reasonable effort from data material held in machine-readable form.

12.4. Miscellaneous

12.4.1. Non-contractual services

To the extent that Service Provider provides technical information or acts in a consulting capacity and such information or consulting is not included in the contractually agreed scope of Services by Service Provider, this shall take place free of charge and under exclusion of any liability.

12.4.2. No strict liability

- (a) Any strict liability (“verschuldensunabhängige Haftung”) of Service Provider for defects pursuant to section 536 a subsection 1 half-sentence 1 German Civil Code (Bürgerliches Gesetzbuch – hereinafter **BGB**) is hereby excluded.
- (b) The limitations of liability regulated in this Agreement shall also apply in favour of employees, workers, representatives, organs, person used to perform and other vicarious agents of Service Provider. Service Provider shall only be liable for vicarious agents (“Verrichtungsgehilfen”) who are not also performing agents (“Erfüllungsgehilfen”) if it is guilty of intent or gross negligence in the selection or monitoring of vicarious agents.

12.5. Unlimited liability

The aforementioned limitations of liability shall not apply in the event of injury to life, limb or health. Liability based on mandatory, indispensable statutory provisions shall also remain unaffected.

13. Compliance

Both Parties are fully committed to fully comply with all applicable laws, regulations, ordinances, rules and standards, and shall commit their employees to the same extent.

13.1. Anti-terror regulations and sanctions

- (a) Customer is obliged to take all suitable measures to ensure that compliance within its company with anti-terror regulations and other national and international embargo and trade control rules is warranted.
- (b) Customer hereby declares that its company and its employees are not named on the valid sanctions lists. Furthermore, Customer declares to comply with all anti-terror regulations and other national and international embargo and trade control rules. Moreover, Customer authorises reviews of its data on the part of Service Provider with regard to the aforementioned sanctions lists. Service Provider shall always follow all applicable data protection regulations.
- (c) Customer must also inform Service Provider immediately in writing or via e-mail in the event of any positive results discovered when reviewing the aforementioned sanctions lists.

13.2. Anti-corruption

- (a) Customer undertakes to comply with all applicable anti-corruption regulations in connection with the execution of this Agreement.
- (b) Customer shall not provide, offer, promise or authorise the payment of any money, fee, commission, remuneration or any other valuable item to or for the benefit of any government official in order to influence an act or decision in violation of his or her lawful duty and applicable law for the purpose of obtaining or securing an improper advantage or creating a conflict of interest. Customer will inform Service Provider immediately in the event of knowledge or suspicion of corruption cases that are in relation to this Agreement.

13.3. Bribery; fraud

When using Platform, Customer shall refrain from any practices relating to corruption, bribery or fraud and may not, either directly or indirectly, e.g. through intermediaries offer, promise, demand or accept any improper personal, financial or other advantage that has the ability

- (a) to influence decision-making or
- (b) to create a conflict of interest, deceive or
- (c) to mislead other customers, its directors, officers, employees, consultants or agents with the intent to deprive them of some legal right.

14. Indemnification

14.1. Third Party claims

14.1.1. Indemnification by Customer

- (a) If Third Parties incur damages in connection with Customer's use of Platform, Customer will indemnify Service Provider against claims for damages by such Third Parties.
- (b) In the event Service Provider seeks indemnification from Customer according to 14 (Indemnification), Service Provider will inform Customer promptly in writing or via e-mail.
- (c) In this case, Service Provider is entitled to appoint a legal counsel and to control any proceeding as well as to demand reimbursement of the associated costs.

14.2. Property rights

14.2.1. Indemnification by Service Provider

- (a) Service Provider will indemnify Customer from claims of Third Parties arising from the infringement of their Intellectual Property rights which have arisen through the use of Services by Customer to the extent set out in 12 (Liability).
- (b) Customer will give Service Provider prompt written notice in parallel with an e-mail notification of such claim. Customer will also provide information, reasonable assistance as well as the sole authority to Service Provider to defend or settle such claim.
- (c) Service Provider may, at its option and reasonable discretion
 - (i) obtain for Customer the right to continue using Services, or
 - (ii) replace or modify Services so that they become non-infringing; or
 - (iii) cease to provide Services and reimburse Customer for fees already paid.

14.2.2. No obligation

- (a) If Customer resolves the dispute with a Third Party without the prior written consent of Service Provider, Service Provider is not obliged to indemnify Customer in accordance with the provisions of 14.2.1 (Indemnification by Service Provider).
- (b) Service Provider will have no obligation to indemnify Customer if the infringement is based on an unauthorised modification of Services by Customer or a Third Party on Customer's behalf or the usage of Services in combination with any hardware, software or material not consented to by Service Provider, unless Customer proves that such modification or usage had no influence on the asserted claims for infringement.

15. Jurisdiction and governing law; dispute resolution

15.1. Jurisdiction; governing law

- (a) This Agreement and all Statements Of Work concluded hereunder shall be exclusively governed by and construed in accordance with the substantive laws of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (b) The place of jurisdiction for any legal disputes is Ulm, Germany.
- (c) Service Provider retains the right to sue Customer in their respective general place of jurisdiction.

15.2. Place of performance

The place of performance for delivery and payment of Services is Ulm, Germany.

15.3. Dispute resolution

- (a) Prior to initiating litigation, Parties shall make a good faith attempt to resolve their dispute through direct negotiation by referring the dispute to a competent person with authority to settle the dispute.
- (b) In the event of a dispute relating to this Agreement or any Statement Of Work, Party raising the matter in dispute will notify the other Party in a written notice describing in sufficient detail the nature of the dispute. Each Party will then appoint one or more representatives to resolve the dispute. These representatives will promptly meet and negotiate in good faith to reach a fair and equitable settlement. At the end of 60 days, if no settlement has been reached, either Party may end discussions and declare an impasse.

15.4. Outside EEA

- (a) If Customer is located outside the European Economic Area, all disputes arising out of or in relation to this Agreement, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the arbitration Rules of the International Chamber of Commerce (ICC) in force on the date when the Notice of Arbitration is submitted in accordance with these rules, excluding the access to regular courts.
- (b) The arbitration court shall consist of three arbitrators.
- (c) The seat of the arbitration shall be in Berlin, Germany.
- (d) The language of the arbitral proceedings shall be English.

16. Interpretation

16.1. Severability clause

- (a) If any provision of this Agreement or any Statement Of Work should be or become wholly or partially void, ineffective or unenforceable, the validity, effectiveness and enforceability of the other provisions of this Agreement or Statement Of Work shall not be affected thereby.
- (b) Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject-matter, extent, time, place and scope.
- (c) The aforesaid shall apply mutatis mutandis if a necessary arrangement has not been made at the conclusion of this Agreement or a Statement Of Work concluded on the basis hereof.

17. Assignment

Customer is not entitled to assign any of the rights and obligations of this Agreement or any Statement Of Work without prior written approval by Service Provider.

18. Declarations

- (a) Customer shall make all legally relevant declarations in connection with this Agreement and any Statement Of Work in writing or via e-mail. Service Provider shall make such declarations in writing or to the e-mail address provided by Customer.
- (b) Customer will keep its Contact Data up to date and notify Service Provider of any changes without undue delay.

19. Changes

Parties will negotiate in good faith to make changes of this Agreement as well as any other conditions if these become necessary due to new technical developments, changes in the law, extensions to Services or other comparable compelling reasons.

20. Entire agreement

- (a) This Agreement, the exhibit(s) and the respective Statements Of Work constitute the entire agreement between Parties and supersede all prior negotiations, declarations or agreements, either oral or written, related hereto.
- (b) Deviating general terms and conditions of Parties shall not apply.

Exhibit 1: Accession Agreement (Standard Contractual Clauses)

This Accession Agreement is concluded on _____ (hereinafter **Effective Date**)

between

Transporeon GmbH
Magirus-Deutz-Str. 16
89077 Ulm
Deutschland

hereinafter **Service Provider** and / or “data exporter”

hereinafter **Company** and / or “data importer”

hereinafter individually **Party** or collectively **Parties**

1. Preamble

- (a) Company is Affiliate or Establishment of _____ (“Customer”).
- (b) Customer and Service Provider are parties to this Agreement dated _____.
- (c) Company enters into this Accession Agreement with Service Provider, pursuant to the provisions of this Agreement, in order to use Services provided by Service Provider as stipulated in this Agreement.
- (d) Company is domiciled outside of the European Economic Area. For this reason, this Accession Agreement needs to include special conditions required by applicable data protection regulations that Company and Service Provider have to consider.

2. Scope

- (a) Company agrees with all the terms and conditions, whether financial or legal, as stipulated in this Agreement and the corresponding Statement(s) of Work which are therefore incorporated into this Accession Agreement by reference.
- (b) Service Provider shall provide and perform Services as stipulated in this Agreement and described in Statement of Work.
- (c) Company will comply with the Standard Contractual Clauses in order to provide an appropriate level of protection when processing personal data.
- (d) Company designates the following person as contact point for data protection enquiries:

E-mail: _____

- (e) Service Provider designates the following person as contact point for data protection enquiries:

Data Protection Officer of Transporeon GmbH
Magirus-Deutz-Str. 16, DE-89077 Ulm, Germany
E-mail: dataprotection@transporeon.com
Competent supervisory authority: Der Landesbeauftragte für den Datenschutz und die Informationsfreiheit Baden-Württemberg, Germany

Standard Contractual Clauses

Module One: Transfer controller to controller

Between

Service Provider

as set forth in Accession Agreement

hereinafter “data exporter”

and

Company

as set forth in Accession Agreement

hereinafter “data importer”

each a “party”; together “the parties”.

Section I

Clause 1

Purpose and scope

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)¹ for the transfer of personal data to a third country.
- (b) The Parties:
- (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter ‘entity/ies’) transferring the personal data, as listed above / in Annex I.A (hereinafter each ‘data exporter’), and
 - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed above / in Annex I.A (hereinafter each ‘data importer’)
- have agreed to these standard contractual clauses (hereinafter: ‘Clauses’).
- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

¹ Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

Clause 2**Effect and invariability of the Clauses**

- (e) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
- (f) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

Clause 3**Third-party beneficiaries**

- (g) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
 - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
 - (ii) Clause 8.5 (e) and Clause 8.9(b);
 - (iii) -
 - (iv) Clause 12(a) and (d);
 - (v) Clause 13;
 - (vi) Clause 15.1(c), (d) and (e);
 - (vii) Clause 16(e);
 - (viii) Clause 18(a) and (b).
- (h) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

Clause 4**Interpretation**

- (i) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (j) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (k) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

Clause 5**Hierarchy**

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

Clause 6**Description of the transfer(s)**

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

Clause 7

Non-applicable

Section II – Obligations of the parties

Clause 8

Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

8.1 Purpose limitation

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B. It may only process the personal data for another purpose:

- (i) where it has obtained the data subject's prior consent;
- (ii) where necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
- (iii) where necessary in order to protect the vital interests of the data subject or of another natural person.

8.2 Transparency

- (l) In order to enable data subjects to effectively exercise their rights pursuant to Clause 10, the data importer shall inform them, either directly or through the data exporter:
 - (i) of its identity and contact details;
 - (ii) of the categories of personal data processed;
 - (iii) of the right to obtain a copy of these Clauses;
 - (iv) where it intends to onward transfer the personal data to any third party/ies, of the recipient or categories of recipients (as appropriate with a view to providing meaningful information), the purpose of such onward transfer and the ground therefore pursuant to Clause 8.7.
- (m) Paragraph (a) shall not apply where the data subject already has the information, including when such information has already been provided by the data exporter, or providing the information proves impossible or would involve a disproportionate effort for the data importer. In the latter case, the data importer shall, to the extent possible, make the information publicly available.
- (n) On request, the Parties shall make a copy of these Clauses, including the Appendix as completed by them, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the Parties may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.
- (o) Paragraphs (a) to (c) are without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

8.3 Accuracy and data minimisation

- (p) Each Party shall ensure that the personal data is accurate and, where necessary, kept up to date. The data importer shall take every reasonable step to ensure that personal data that is inaccurate, having regard to the purpose(s) of processing, is erased or rectified without delay.
- (q) If one of the Parties becomes aware that the personal data it has transferred or received is inaccurate, or has become outdated, it shall inform the other Party without undue delay.
- (r) The data importer shall ensure that the personal data is adequate, relevant and limited to what is necessary in relation to the purpose(s) of processing.

8.4 Storage limitation

The data importer shall retain the personal data for no longer than necessary for the purpose(s) for which it is processed. It shall put in place appropriate technical or organisational measures to ensure compliance with this obligation, including erasure or anonymisation² of the data and all back-ups at the end of the retention period.

8.5 Security of processing

- (s) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the personal data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.
- (t) The Parties have agreed on the technical and organisational measures set out in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
- (u) The data importer shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (v) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the personal data breach, including measures to mitigate its possible adverse effects.
- (w) In case of a personal data breach that is likely to result in a risk to the rights and freedoms of natural persons, the data importer shall without undue delay notify both the data exporter and the competent supervisory authority pursuant to Clause 13. Such notification shall contain i) a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), ii) its likely consequences, iii) the measures taken or proposed to address the breach, and iv) the details of a contact point from whom more information can be obtained. To the extent it is not possible for the data importer to provide all the information at the same time, it may do so in phases without undue further delay.
- (x) In case of a personal data breach that is likely to result in a high risk to the rights and freedoms of natural persons, the data importer shall also notify without undue delay the data subjects concerned of the personal data breach and its nature, if necessary in cooperation with the data exporter, together with the information referred to in paragraph (e), points ii) to iv), unless the data importer has implemented measures to significantly reduce the risk to the rights or freedoms of natural persons, or notification would involve disproportionate efforts. In the latter case, the data importer shall instead issue a public communication or take a similar measure to inform the public of the personal data breach.
- (y) The data importer shall document all relevant facts relating to the personal data breach, including its effects and any remedial action taken, and keep a record thereof.

8.6 Sensitive data

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions or offences (hereinafter 'sensitive data'), the data importer shall apply specific restrictions and/or additional safeguards adapted to the specific nature of the data and the risks involved. This may include restricting the personnel permitted to access the personal data, additional security measures (such as pseudonymisation) and/or additional restrictions with respect to further disclosure.

8.7 Onward transfers

The data importer shall not disclose the personal data to a third party located outside the European Union³ (in the same country as the data importer or in another third country, hereinafter 'onward transfer') unless the third party is or agrees to be bound by these Clauses, under the appropriate Module. Otherwise, an onward transfer by the data importer may only take place if:

- (i) it is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;

² This requires rendering the data anonymous in such a way that the individual is no longer identifiable by anyone, in line with recital 26 of Regulation (EU) 2016/679, and that this process is irreversible.

³ The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

- (ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679 with respect to the processing in question;
- (iii) the third party enters into a binding instrument with the data importer ensuring the same level of data protection as under these Clauses, and the data importer provides a copy of these safeguards to the data exporter;
- (iv) it is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings;
- (v) it is necessary in order to protect the vital interests of the data subject or of another natural person; or
- (vi) where none of the other conditions apply, the data importer has obtained the explicit consent of the data subject for an onward transfer in a specific situation, after having informed him/her of its purpose(s), the identity of the recipient and the possible risks of such transfer to him/her due to the lack of appropriate data protection safeguards. In this case, the data importer shall inform the data exporter and, at the request of the latter, shall transmit to it a copy of the information provided to the data subject.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.8 Processing under the authority of the data importer

The data importer shall ensure that any person acting under its authority, including a processor, processes the data only on its instructions.

8.9 Documentation and compliance

- (z) Each Party shall be able to demonstrate compliance with its obligations under these Clauses. In particular, the data importer shall keep appropriate documentation of the processing activities carried out under its responsibility.
- (aa) The data importer shall make such documentation available to the competent supervisory authority on request.

Clause 9

Non-applicable

Clause 10

Data subject rights

- (bb) The data importer, where relevant with the assistance of the data exporter, shall deal with any enquiries and requests it receives from a data subject relating to the processing of his/her personal data and the exercise of his/her rights under these Clauses without undue delay and at the latest within one month of the receipt of the enquiry or request⁴. The data importer shall take appropriate measures to facilitate such enquiries, requests and the exercise of data subject rights. Any information provided to the data subject shall be in an intelligible and easily accessible form, using clear and plain language.
- (cc) In particular, upon request by the data subject the data importer shall, free of charge:
 - (i) provide confirmation to the data subject as to whether personal data concerning him/her is being processed and, where this is the case, a copy of the data relating to him/her and the information in Annex I; if personal data has been or will be onward transferred, provide information on recipients or categories of recipients (as appropriate with a view to providing meaningful information) to which the personal data has been or will be onward transferred, the purpose of such onward transfers and their ground pursuant to Clause 8.7; and provide information on the right to lodge a complaint with a supervisory authority in accordance with Clause 12(c)(i);
 - (ii) rectify inaccurate or incomplete data concerning the data subject;
 - (iii) erase personal data concerning the data subject if such data is being or has been processed in violation of any of these Clauses ensuring third-party beneficiary rights, or if the data subject withdraws the consent on which the processing is based.
- (dd) Where the data importer processes the personal data for direct marketing purposes, it shall cease processing for such purposes if the data subject objects to it.
- (ee) The data importer shall not make a decision based solely on the automated processing of the personal data transferred (hereinafter 'automated decision'), which would produce legal effects concerning the data subject or similarly significantly affect him/her, unless with the explicit consent of the data subject or if authorised to do so under the laws of the country of destination,

⁴ That period may be extended by a maximum of two more months, to the extent necessary taking into account the complexity and number of requests. The data importer shall duly and promptly inform the data subject of any such extension.

provided that such laws lay down suitable measures to safeguard the data subject's rights and legitimate interests. In this case, the data importer shall, where necessary in cooperation with the data exporter:

- (i) inform the data subject about the envisaged automated decision, the envisaged consequences and the logic involved; and
 - (ii) implement suitable safeguards, at least by enabling the data subject to contest the decision, express his/her point of view and obtain review by a human being.
- (ff) Where requests from a data subject are excessive, in particular because of their repetitive character, the data importer may either charge a reasonable fee taking into account the administrative costs of granting the request or refuse to act on the request.
- (gg) The data importer may refuse a data subject's request if such refusal is allowed under the laws of the country of destination and is necessary and proportionate in a democratic society to protect one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679.
- (hh) If the data importer intends to refuse a data subject's request, it shall inform the data subject of the reasons for the refusal and the possibility of lodging a complaint with the competent supervisory authority and/or seeking judicial redress.

Clause 11

Redress

- (ii) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.
- (jj) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
- (kk) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
 - (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
 - (ii) refer the dispute to the competent courts within the meaning of Clause 18.
- (ll) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- (mm) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (nn) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

Clause 12

Liability

- (oo) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (pp) Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.
- (qq) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (rr) The Parties agree that if one Party is held liable under paragraph (c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
- (ss) The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

Clause 13**Supervision**

- (a) The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.
- (b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

Section III – Local laws and obligations in case of access by public authorities**Clause 14****Local laws and practices affecting compliance with the Clauses**

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
 - (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
 - (ii) the laws and practices of the third country of destination– including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards⁵;
 - (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- (c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
- (e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).
- (f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards

⁵ As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

Clause 15

Obligations of the data importer in case of access by public authorities

15.1 Notification

- (a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
 - (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
 - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 Review of legality and data minimisation

- (a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).
- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

Section IV – Final provisions

Clause 16

Non-compliance with the Clauses and termination

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.

- (b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
- (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
 - (ii) the data importer is in substantial or persistent breach of these Clauses; or
 - (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.
- In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.
- (d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
- (e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

Clause 17

Governing law

These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of Germany.

Clause 18

Choice of forum and jurisdiction

- (a) Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
- (b) The Parties agree that those shall be the courts of Ulm, Germany.
- (c) A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
- (d) The Parties agree to submit themselves to the jurisdiction of such courts.

Annex I

A. List of parties

Data exporter: Service Provider

1. Name: as per the cover page
Address: as per the cover page
Contact person's name, position and contact details: as per the cover page
Activities relevant to the data transferred under these Clauses: data processing on the Platform
Signature and date: as per the signature page
Role: Controller

Data importer(s): Company

2. Name: as per the cover page
Address: as per the cover page
Contact person's name, position and contact details: as per the cover page
Activities relevant to the data transferred under these Clauses: data processing on the Platform
Signature and date: as per the signature page
Role: Controller

B. Description of the transfer

Data Subjects

The personal data transferred concern the following categories of Data Subjects:

Users (schedulers) working with the data importer on Platform, drivers who carry out the transports of the data importer that are processed via Platform

Categories of data

The personal data transferred concern the following categories of data:

Business contact details (e.g. name, surname, business phone number, business e-mail address) of Users, business contact details and license plate number of drivers, location data of the transports processed via Platform

Sensitive data (if appropriate)

The personal data transferred concern the following categories of sensitive data:

Not applicable

The frequency of the transfer

The data is transferred on continuous basis during Platform usage

Nature of the processing

Data processing on the SaaS-based Platform

Purposes of the transfer(s)

The transfer is made for the following purposes:

The data exporter enables the data importer to use Platform for optimisation of data importer's logistics processes through different functions of Platform, in particular, transport assignment, load planning and tracking of transports

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

The storage periods according to the privacy notice of Platform apply

Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients:

Data importer's Users and other Users on Platform (e.g. business partners of the data importer)

C. Competent supervisory authority

As per the cover page

Annex II

Technical and organisational measures including technical and organisational measures to ensure the security of the data

IMPORTANT: needs to be provided by Company to Service Provider upon conclusion of the Master Service Agreement!

Explanatory note:

The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly **indicate which measures apply to each transfer/set of transfers**.

Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.

[Examples of possible measures:

Measures of pseudonymisation and encryption of personal data

Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services

Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident

Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing

Measures for user identification and authorisation

Measures for the protection of data during transmission

Measures for the protection of data during storage

Measures for ensuring physical security of locations at which personal data are processed

Measures for ensuring events logging

Measures for ensuring system configuration, including default configuration

Measures for internal IT and IT security governance and management

Measures for certification/assurance of processes and products

Measures for ensuring data minimisation

Measures for ensuring data quality

Measures for ensuring limited data retention

Measures for ensuring accountability

Measures for allowing data portability and ensuring erasure]