

Sporazum o uporabi platforme

v nadaljevanju besedila **sporazum**

med
Transporeon GmbH
Heidenheimerstr. 55/1
DE-89075 Ulm

v nadaljevanju besedila **ponudnik storitve**

in

v nadaljevanju **stranka**v nadaljevanju besedila posamezno **subjekt** ali skupno **subjekti**

Definicije

Opis razpoložljivosti: Opis razpoložljivosti in učinkovitosti parametrov *platforme* in drugih *storitev* ravni storitev

Prevoznik: Podjetje, ki od *vkrcevalca* prejme naročilo za *prevoz* in je odgovorno za njegovo izvedbo; *prevoznik* vključuje, vendar ni omejen na dobavitelja (v nadaljevanju besedila **dobavitelj**), pri katerem *vkrcevalec* naroči blago, ali logističnega ponudnika *vkrcevalca* ali kateri koli drug subjekt, ki mu *prevoznik* odda naročilo za prevoz s posredovanjem naročila za prevoz prek *platforme*

Zaupne informacije: Nejavne informacije v poljubni obliki, ki jih je subjekt, ki informacije razkrije, posredoval prejemniku informacij, vključno s *podatki o dostopu*, podatki, shranjenimi na *platformi*, podatki, povezanimi z drugimi podjetji, naročili in ponodbami, trgovinskimi in industrijskimi skrivnostmi, postopki, *intelektualno lastnino*, finančnimi ali operativnimi informacijami, ceno ali informacijami o izdelkih oz. povezano dokumentacijo

Strankini podatki: Vsi podatki *stranke*, shranjeni na *platformi* ali ustvarjeni na podlagi storitve *platforme*, zlasti podatki v povezavi s *strankinimi* prevozi (npr. prevozi, poti, prevozne poti, ponudbe, cene, prevozna dokumentacija) in podatki glede uporabe storitve *platforme* za *strankine uporabnike*

Pooblaščen oseba za varstvo podatkov: Na *pooblaščen osebo za varstvo podatkov* se lahko obrnete prek pošte s ključno besedo »Data Protection Officer« na navedeni naslov oz. e-poštni naslov dataprotection@transporeon.com.

Posameznik, na katerega se nanašajo osebni podatki: Katera koli določljiva ali nedoločljiva fizična oseba

Ustanovitelj: Podružnica, agencija ali drug obrat *stranke*, ki učinkovito in dejansko izvaja dejavnosti v obliki stabilnih dogovorov

Prejemnik tovora: prejemnik blaga, ki mu *prevoznik* dostavi blago na podlagi naročila *vkrcevalca*

Interni sistem: ERP sistem (npr. SAP ERP, JD Edwards)

Intelektualna lastnina: Patenti, načrti, modeli, risbe, avtorske pravice, pravice za programsko opremo, pravice za podatkovne baze, blagovne znamke, znanje, imena spletnih domen, imena podjetij in na splošno vse pravice enake ali podobne narave, najsi bodo registrirane ali neregistrirane, kjer koli na svetu, vključno z njihovimi širitvami, preklici, oživitvami in obnovitvami

Lokalne hčerinske družbe: *Povezane družbe ponudnika storitve*, ki bi lahko delovale tudi kot *ponudnik storitev* glede na ponujene *storitve*, so navedene tukaj: https://legal.transporeon.com/transporeon_entities.pdf

Platform: Komunikacijska in transakcijska platforma v oblaku, ki omogoča tudi elektronsko naročanje prevoza in upravljanje stroškov prevoza, ki jo ponudnik storitev upravlja za komercialne stranke (podjetje podjetju)

Smernice za uporabo platforme: Nabor pravil glede uporabe *platforme*, vključno z varnostnimi vidiki, vedenjem na *platformi* in informacijami o uporabniških računih

Storitveni partner: Kateri koli subjekt, ki deluje kot podizvajalec *ponudnika storitve* in ki ga je *ponudnik storitve* pisno ali kako drugače predlagal *stranki* kot *storitvenega partnerja* ali je naveden na naslednjem naslovu: https://legal.transporeon.com/transporeon_service_providers.pdf

Storitve: *Storitve in/ali dela*, ki jih zagotavlja *ponudnik storitve*

Vkrcevalec: Proizvajalec, distributer ali prejemnik blaga; podjetje, ki pri *dobavitelju* naroči *storitve*

Vzorčne klavzule EU: Izvedbeni sklep Komisije (EU) 2021/914 z dne 4. junija 2021 o standardnih vzorčnih klavzulah EU za prenos osebnih podatkov v tretje države v skladu z Uredbo (EU) 2016/679 Evropskega parlamenta in Sveta – PRVI MODUL: Prenos upravljavca k upravljavcu

Systemske zahteve: Tehnične zahteve glede strojne in programske opreme, ki jih morajo izpolnjevati sistemi *stranke* za uporabo *platforme* in *storitev*, navedenih na spletnem mestu <http://www.transporeon.com/en/system-requirements>

Transporeon Trucker: *Transporeon Trucker* za voznike; aplikacija, nameščena na mobilnih napravah, ki jo zagotavlja *ponudnik storitve*

Transporeon Visibility: Vse storitve, ki so na voljo na *platformi* za omogočanje sledenja sporočil o statusu na področju opravljanja transporta

Uporabnik: Fizična oseba, ki jo je pooblastila *stranka* in potrdil *ponudnik storitve* oziroma povezane družbe *ponudnika storitve*, ki ima dostop do *platforme* z uporabo podatkov o dostopu, dodeljenih tej osebi

Uvodne določbe

Stranka želi izboljšati učinkovitost svojih logističnih postopkov. V ta namen *ponudnik storitve stranki* zagotovi dostop do *platforme*. V zvezi s *strankino* uporabo *platforme* lahko *ponudnik storitve* opravlja tudi storitve IT, vključno s svetovanjem, vodenjem projektov, prilagoditvami in podporo.

1. Sklenitev pogodbe

Ta *sporazum* je sklenjen, ko *stranka* opravi registracijo, povezano s tem *sporazumom*. *Stranka* bo ob upoštevanju navodil Registracijskega središča sklenila *sporazum* s klikom na »Registriraj«. Spletna registracija mora biti izpolnjena v celoti iz z resničnimi podatki. *Ponudnik storitve* lahko zahteva, da pooblaščen podpisnik *stranke* pokaže ustrezno dokazilo o pooblastilu za zastopanje *stranke*. *Ponudnik storitve* si pridržuje pravico, da v primeru zlorabe ali napačnih posredovanih informacij registracijo zavrne, prekliče ali izbriše.

2. Varnost platforme in storitev

2.1. Smernice za uporabo platforme

- (a) *Stranka* bo imela dostop do *platforme* na podlagi svojih *podatkov o dostopu*. *Stranka* soglaša, da bo *podatke o dostopu* varovala in omejila nepooblaščen dostop do računa. *Stranka* bo redno spreminjala svoje geslo.
- (b) *Stranka* soglaša s pogoji, navedenimi v *smernicah za uporabo platforme*, ki si jih lahko ogledate na spletni strani <https://www.transporeon.com/en/pug>. *Ponudnik storitve* lahko občasno posodobi *smernice za uporabo platforme* v skladu s pogoji, opredeljenimi v razdelku 18 (Spremembe). *Stranka smernice za uporabo platforme* omogoči za vse uporabnike svojih računov. *Stranka* je še naprej odgovorna za vse dejavnosti, ki se izvajajo v posameznih računih *platforme*, in za vedenje svojih uporabnikov.

2.1.2. Posledice kršenja smernic za uporabo platforme

- (a) *Ponudnik storitve* si pridržuje pravico, da *stranki* prepreči dostop do *platforme* v primeru kršitve *smernic za uporabo platforme* in da izbriše ali blokira podatke *stranke*, ki kršijo določbe tega *sporazuma*.
- (b) *Ponudnik storitve* bo *stranko* o preprečitvi dostopa in blokadi ali izbrisu njenih podatkov obvestil pisno ali po e-pošti.
- (c) *Ponudnik storitve* ima pravico *strankine vkrcev* obvestiti o bližajoči se ali obstoječi blokadi *strankinega* dostopa do *platforme*.

2.1.3. Prenos tehničnih podatkov

Uporaba nezavarovanih poti za prenos podatkov, zlasti HTTP ali FTP, lahko pripelje do tega, da lahko do teh podatkov dostopajo tretje strani ter jih berejo ali spreminjajo. Da bi preprečili to tveganje, *ponudnik storitve* zagotavlja varne poti za prenos podatkov, npr. HTTPS, FTPS ali AS2. Če se *stranka* kljub temu odloči za uporabo nezavarovanih poti prenosa, je *stranka* izključno sama odgovorna za škodo, ki lahko izhaja iz tega.

3. Pravice do uporabe

- (a) *Ponudnik storitve stranki* odobri dostop do in uporabo *platforme* izključno za namen in trajanje tega *sporazuma*. *Ponudnik storitve* lahko občasno uvede nove izdaje, različice, posodobitve in nadgradnje *platforme*. V tem primeru prejšnji stavek ustrezno velja.
- (b) *Stranka* mora za dostopanje in uporabo *platforme* izpolnjevati *sistemske zahteve*. *Sistemske zahteve* se lahko občasno posodobijo skladno s pogoji, opredeljenimi v razdelku 18 (Spremembe).
- (c) *Stranka* se zavezuje, da bo *platforme* in *storitve* uporabljala izključno za lastne notranje poslovne namene v skladu s *sporazumom*. *Stranka* ne more uporabljati *storitev* ali rezultatov, pridobljenih iz *storitev* za namene, ki niso prvotni nameni, vendar to ni omejeno na ustvarjanje lastnega profila, povezanega z zemljevidom, zbirko podatkov ali izdelkom. *Stranka* ne more uporabljati *storitev* za nadzorovanje zaposlenih, sledenje osebam itd.
- (d) *Stranka* nima pravice proti plačilu ali zastonj tretjim stranem omogočiti dostopa do *platforme*.
- (e) *Ponudnik storitve stranki* ne zagotavlja nobenih licenc in/ali *intelektualne lastnine* (sedanje in/ali prihodnje).
- (f) Katera koli in vsa *intelektualna lastnina*, ki je bila v lasti *ponudnika storitve* pred datumom sklenitve *sporazuma*, ostane v izključni lasti *ponudnika storitve*. Katera koli in vsa *intelektualna lastnina*, ki izhaja iz *sporazuma*, je pridobljena ali razvita v povezavi z njim in zagotavljanjem *storitev* po datumu sklenitve *sporazuma*, je v lasti *ponudnika storitve*.

- (g) *Ponudnik Storitve* s tem zagotavlja storitve tudi *strankinim* povezanim družbam. *Stranka* mora zagotoviti, da *strankine* povezane družbe, ki želijo uporabljati storitve, dovolj zgodaj prejmejo kopijo tega sporazuma. Ta sporazum se ustrezno nanaša na *strankine* povezane družbe, če ni drugače navedeno v tem sporazumu. To velja tudi, če *strankine* povezane družbe niso eksplicitno imenovane v besedilu tega sporazuma. *Stranka* s tem v imenu vseh svojih povezanih družb izjavlja, da se povezane družbe v celoti strinjajo z določili, navedenimi v tem sporazumu in da se *strankine* povezane družbe s *ponudnikom* storitve ne bodo ponovno pogajale o teh določilih, tako da vse *strankine* obveznosti veljajo tudi za *strankine* povezane družbe, kot da so že sedaj subjekt v tem sporazumu. Na podlagi tega imajo *strankine* povezane družbe pravico do dostopa in uporabe storitev v oblaku ali drugih storitev, ki jih zagotavlja *ponudnik* storitve, tako v *strankinem* kot svojem imenu.
- (h) *Stranka* potrjuje, da ima pravico, da v celoti zastopa svoje povezane družbe in da vzpostavi pravice in dolžnosti povezanih družb, ki izhajajo iz tega sporazuma. *Stranka* je odgovorna za obveznosti povezanih družb, ki izhajajo iz tega sporazuma.

4. Zaščita podatkov in varnost podatkov, *strankini* podatki

4.1. Obdelava osebnih podatkov

- (a) *Ponudnik* storitve in *stranka* morata ravnati v skladu z zakonodajo in predpisi v zadevni pristojnosti glede varstva podatkov oziroma uporabe ali obdelave osebnih podatkov.
- (b) *Ponudnik* storitve določi namene in sredstva obdelave osebnih podatkov znotraj obsega storitev, ki jih zagotavlja po tem sporazumu, in tako deluje kot neodvisni pravljavec.
- (c) Kadar *ponudnik* storitve obdeluje osebne podatke, je takšna obdelava strogo omejena na tisto, kar je potrebno za izvajanje storitev, kot je opredeljeno v tem sporazumu ob upoštevanju interesov *posameznika*, na katerega se nanašajo osebni podatki.
- (d) Podrobnosti glede obdelave osebnih podatkov (Obvestilo o zasebnosti) so na voljo v nogi na prijavi strani storitve platforme ali na spletnem naslovu https://legal.transporeon.com/DP/PLT/sl_Platform_Privacy_Policy.pdf
- (e) *Ponudnik* storitve obdeluje osebne podatke uporabnikov storitve *Transporeon Visibility*, zlasti lokacijske podatke (npr. položaj GPS), registrsko številko. Podatki se med drugim obdelujejo zaradi večje transparentnosti pri transportnem postopku. To prav tako obsega oceno zamikov, merjenje prevoznih poti in optimizacijo predvidevanj za transportne čase (= izračune ETA). V primeru uporabe v aplikaciji *Transporeon Trucker* se podatki obdelujejo v skladu s točko a) prvega odstavka 6. člena GDPR, če je voznik za to izrecno zagotovil svojo privolitve. Za vse ostale primere glejte *strankine* odgovornosti v razdelku 4.3.3 (Privolitev posameznikov, na katere se nanašajo podatki).
- (f) *Ponudnik* storitve obdeluje osebne podatke uporabnikov storitve *Transporeon Visibility*, ki jih zagotavljajo storitveni partnerji, zlasti lokacijske podatke (npr. položaj GPS), registrsko številko. Prenos osebnih podatkov od storitvenega partnerja k ponudniku storitve temelji na soglasju v skladu s točko a) prvega odstavka 6. člena GDPR, če je zadevni posameznik, na katerega se nanašajo osebni podatki za to izrecno zagotovil svojo privolitve. Če je namen povezan z izvajanjem sporazuma, sklenjenega s *stranko*, ali zagotavljanjem storitev, ki jih zahteva *stranka*, je pravna podlaga za prenos točka b) prvega odstavka 6. člena GDPR. Z izjemo navedenega je pravna podlaga za prenos točka f) prvega odstavka 6. člena GDPR, pri čemer sme *ponudnik* storitve uporabljati osebne podatke, če je to potrebno na podlagi njegovih legitimnih interesov.
- (g) *Ponudnik* storitve obdeluje ime in priimek, položaj in poslovne kontaktne podatke *strankinih* zaposlenih in predstavnikov za informacije o izdelku in namene odnosov s *stranko*, kar je v skladu s točko f) prvega odstavka 6. člena odstavka GDPR.

4.2. Obdelava neosebnih podatkov

- (a) Za namene zagotavljanja storitev na podlagi sporazuma ter zaradi omogočanja hitrega in nemotenega vkrcanja *vrcevalcev* občasno prosi *ponudnika* storitve za posredovanje *strankinih* podatkov *vrcevalcu*. *Ponudnik* storitve obdeluje neosebne podatke, ki brez omejitev vključujejo naslednje:
- datum, od katerega *stranka* uporablja storitev platforme
 - katero različico sporazuma je sklenila *stranka*
 - katere module uporablja *stranka*
 - katere vmesnike ima *stranka* za *ponudnika* storitve
 - status *strankinega* vkrcanja
 - vrsto usposabljanja, ki jo je *stranka* prejela od *ponudnika* storitve
 - število naprav, uporabljenih za *Transporeon Visibility*
 - podatke o ukrepih, ki jih izvaja *stranka* za namene storitve vidnosti (npr. organizacija internega usposabljanja voznikov)
- (b) *Ponudnik* storitve lahko poleg drugih kriterijev uporabi eno ali več zgoraj navedenih neosebnih podatkov za namen oblikovanja ocene Partner Performance Score, funkcije, ki je oblikovana za zagotavljanje konkurenčne prednosti za *stranko*, in da *stranki* omogoči vstop v nove poslovne priložnosti skupaj z *vrcevalci* na platformi.

4.3. Obveznosti v skladu z zakonom o varstvu podatkov

4.3.1. Zagotavljanje osebnih podatkov

- (a) *Stranka mora ponudniku storitve zagotoviti osebne in neosebne podatke, ki so nujni za izvedbo storitev, določenih s tem sporazumom. To zlasti vključuje osebne podatke, omenjene v Obvestilu o zasebnosti (glejte 4.1(b) (Obdelava osebnih podatkov)).*
- (b) Podatke lahko neposredno zagotovi *stranka* ali pa jih zagotovijo *podatki nanašajo*, na zahtevo *stranke*.
- (c) *Stranka* bo poskrbela za čim manjšo količino potrebnih osebnih podatkov (načelo čim manjšega zbiranja podatkov).

4.3.2. Informacije o podatki nanašajo

- (a) *Stranka* bo vsem *podatki nanašajo*, katerih osebne podatke posreduje *ponudniku storitve*, v jedrnat, pregledni, razumljivi in lahko dostopni obliki ter jasnem in preprostem jeziku zagotovila celovite in pravilne informacije v skladu s členoma 13 in 14 o GDPR obdelovanju njihovih osebnih podatkov za namene *sporazuma*.
- (b) *Stranka* tudi obvesti *podatki nanašajo*, o njihovih pravicah, ki izhajajo iz poglavja III GDPR. Te pravice lahko zlasti vključujejo pravico do dostopa, pravico do popravka, pravico do omejitve obdelave in pravico do nasprotovanja obdelavi.
- (c) Te informacijske obveznosti lahko izpolni *stranka* – če jih *osebe, na katere se podatki nanašajo*, še ne poznajo – tako da zagotovijo Obvestilo o zasebnosti (glejte 4.1(b) (Obdelava osebnih podatkov ponudnika storitve).

4.3.3. Privolitev podatki nanašajo

- (a) *Stranka* mora, če je treba v skladu s členom 4.1(b) (Obdelava osebnih podatkov), od *oseb, na katere podatki nanašajo*, pridobiti informirano in veljavno soglasje, kar je skladno s točko a) prvega odstavka 6. člena GDPR z obdelavo njihovih osebnih podatkov znotraj obsega tega *sporazuma*. To soglasje mora zlasti omogočati prenos osebnih podatkov *ponudniku storitve in nadaljnji prenos osebnih podatkov lokalnim hčerinskim družbam in storitvenim partnerjem ter prenos med njimi*.
- (b) *Stranka* mora v primeru pridobljenega soglasja spremljati neprekinjeno učinkovitost soglasja *podatki nanašajo*. Če je takšno soglasje umaknjeno, bo *stranka* o tem nemudoma pisno ali po e-pošti obvestila *ponudnika storitve*.
- (c) V primeru uporabe storitve *Transporeon Visibility* je *stranka* dolžna o tem obvestiti *posameznike, na katere se nanašajo osebni podatki*, ter pridobiti njihovo privolitev za posredovanje osebnih podatkov, kot so registrska tablica in podatki o lokaciji vozila, prek *platforme*, da se ti podatki zbirajo z nameni, opredeljenimi v 4.1(d) (Obdelava osebnih podatkov), in da bodo ti podatki vidni stranem znotraj prevozne verige, tj. *prevoznikom, dobaviteljem, vkrcevalcem* in posameznim *storitvenim partnerjem* za namen obdelave in spremljanja izvedbe prevoznih nalogov, na katere se podatki nanašajo. Ta odgovornost vključuje obveščanje *posameznikov, na katere se nanašajo osebni podatki* in pridobitev njihovega soglasja, da lahko zgoraj omenjene strani znotraj transportne verige prav tako dodelijo vozilo prevozu. Ta dodelitev, ki jo običajno opravi *stranka*, je predpogoj za podatke o lokaciji vozila, ki se deli prek *platforme*.
- (d) Podrobnosti glede obdelave osebnih podatkov (Obvestilo o zasebnosti, zlasti za voznike) za voznike kot *podatki nanašajo*, je mogoče najti na spletnem naslovu https://legal.transporeon.com/DP/RTV/sl_Driver_Privacy_Policy.pdf.

4.3.4. Zakonita obdelava

- (a) *Stranka* bo zagotovila skladnost z vsemi veljavnimi zakoni o varstvu podatkov pri uporabi vseh osebnih podatkov, ki se nanašajo na *storitve*, jih vsebujejo ali izhajajo iz njih. To vključuje zlasti izpolnjevanje vseh zakonskih zahtev v zvezi z izvajanjem in/ali nadzorom vedenja oseb, ki uporabljajo *storitve* v imenu *stranke*, vključno s posebnimi pravili o obdelavi osebnih podatkov zaposlenih v okviru zaposlovanja, vendar ne omejeno nanje.
- (b) *Stranka* bo zagotovila, da vsaka *strankina ustanovitev*, ki se nahaja zunaj Evropskega gospodarskega prostora, sklene *vsotčne klavzule EU s ponudnikom storitve* ali potrdi svojo skladnost z drugimi ustreznimi zaščitnimi ukrepi, dopustnimi v skladu z veljavno zakonodajo o varstvu podatkov pred pridobitvijo dostopa do platforme, razen če se *strankina ustanovitev* nahaja v državi z ustreznim ravno varstva osebnih podatkov v skladu z odločitvijo Evropske komisije.
- (c) Če *stranka* izve za kakršno koli kršitev varnosti podatkov v povezavi s *storitvami*, bo *stranka* o takšni kršitvi na ustrezen način nemudoma obvestila *ponudnika storitve*. Če veljavna zakonodaja zahteva obveščanje *posameznikov, na katere se nanašajo osebni podatki*, ali nadzornih organov o kakršni koli kršitvi varstva osebnih podatkov in gre za *strankine* podatke, bosta *subjekta* skupaj uskladila obveščanje.
- (d) Če *stranka* uporablja lastne strežnike za izvoz podatkov prek vmesnikov, ki jih zagotavlja *ponudnik storitve*, je *stranka* odgovorna za zagotavljanje varnosti strežnika. To vključuje vse ukrepe za zagotovitev celovitosti, zaupnosti in razpoložljivosti informacij in informacijskih sistemov, ki so običajni za enako vrsto storitev. Primeri takih ukrepov so upravljanje dostopa, upravljanje programskih popravkov, utrjevanje varnosti sistema in šifriranje prenosa podatkov.
- (e) *Stranka* jamči, da lahko vse osebne podatke, ki jih neposredno zagotovijo *stranka* ali *posamezniki, na katere se nanašajo osebni podatki*, na zahtevo *stranke, ponudnik storitve, lokalne hčerinske družbe* in *storitveni partnerji* zakonito obdelujejo za namene tega *sporazuma*.

- (f) *Stranka* je seznanjena z zakoni in predpisi, ki jih vsebuje oziroma izhajajo iz zadevne pristojnosti, glede zaščite podatkov oziroma uporabe ali obdelave osebnih podatkov, ki se nanašajo na *storitve*, določene s tem *sporazumom*.

4.3.5. Odškodnina

V zvezi s kakršno koli kršitvijo varstva podatkov s strani *ponudnika storitve*, ker *stranka* ni izpolnila svojih obveznosti iz tega *sporazuma*, bo *stranka ponudniku storitve* povrnila škodo v skladu z razdelkom 12 (Povračilo škode).

4.4. Anonimna uporaba *podatkov stranke*

- (a) *Stranka* s tem dokumentom *ponudniku storitve* podeljuje brezplačno, preprosto (neekskluzivno), svetovno, začasno neomejeno in nepreklicno pravico do shranjevanja, obdelave, povezave, ocene, analize, posredovanja, objave in ekonomskega izkoriščanja *strankinih podatkov* v anonimni obliki (znotraj pomena, ki ga določa 4.4(c) (Anonimna uporaba podatkov stranke)). Ta dodeljena pravica zlasti vključuje pravico do uporabe in komercialno izkoriščanje podatkov za popraviljanje napak ter za izboljšanje lastnih izdelkov ali izdelkov tretjih oseb (vključno s *storitvami*), za razvoj novih izdelkov, za primerjavo ter tudi za oglaševanje ter znanstvene ali statistične namene.
- (b) Odobrena pravica do uporabe je prenosljiva in jo lahko *ponudnik storitve* nadalje licencira *storitvenim partnerjem* in povezanim družbam.
- (c) Uporaba v anonimni obliki pomeni, da so podatki, ki se bodo izkoriščali, spremenjeni na način, da jih ni več mogoče povezati s (i) posameznikom, zlasti z *uporabniki* ali zaposlenimi *stranke*, (ii) *stranko*, (iii) *vrčevalcem* ali (iv) *ponudnikom*, npr. z združevanjem (povzetek). Če želite določiti, ali je referenca mogoča, je treba, v skladu s splošno presojo, upoštevati vsa sredstva, ki jih bo *ponudnik storitve* ali tretja stran zelo verjetno uporabil/-a za neposredno ali posredno prepoznavanje referenčnega objekta.
- (d) V kolikor uporaba *strankinih podatkov* za zgoraj omenjene namene ne služi za zagotavljanje pogodbenih storitev in predstavlja obdelavo osebnih podatkov (zlasti proces anonimizacije), *ponudnik storitve* ne deluje v vlogi obdelovalca v *strankinem* imenu, pač pa kot neodvisni nadzornik.

5. Opis modulov in *storitev*

Stranka lahko dostopa do dokumenta, ki vsebuje podroben tehnični opis in pogoje za uporabo izdelkov, modulov, funkcij in *storitev*, tako, da klikne <https://www.transporeon.com/en/msd>. *Ponudnik storitve* je upravičen do občasnega spreminjanja tega dokumenta v skladu s pogoji, navedenimi v razdelku 18 (Spremembe), in *stranki* omogoča dostop do posodobljenega dokumenta prek zgornje povezave. Opis modulov in storitev ne predstavlja nikakršnega jamstva ali garancije, pogoji pa veljajo le, če so ustrezne storitve aktivirane za *stranko*. Aktivacija nekaterih modulov, funkcij in *storitev* je predmet dodatnega sporazuma in ločenega komercialnega sporazuma med *ponudnikom storitve* in *stranko*.

6. Ravnj storitev. Dosegljivost. Podpora. Rešitve

6.1. Izvedba

Ponudnik storitve bo izvajal *storitve* ob upoštevanju priznanih tehnoloških pravil

- (a) hitro in skrbno ter na strokoven in profesionalen način ter
- (b) v skladu z vsemi veljavnimi ravnmi storitev, opredeljenimi v *opisu razpoložljivosti*.

6.2. Razpoložljivost; podpora; rešitve

Dosegljivost *platforme*, časi podpore in rešitev okvar za doseganje razpoložljivosti *platforme* so opredeljeni v *opisu razpoložljivosti*, ki je na voljo na spletnem mestu <https://www.transporeon.com/en/avd> in je vključen v ta *sporazum* s sklicem. *Ponudnik storitve* bo občasno posodobil *opis razpoložljivosti* skladno s pogoji, navedenimi v razdelku 18 (Spremembe), in *stranki* omogočil dostop do posodobljenega dokumenta prek zgornje povezave.

7. Trajanje in prenehanje

- (a) *Stranka* lahko kadar koli prekliče ta *sporazum* ob koncu koledarskega meseca s 30-dnevnim odpovednim rokom.
- (b) *Ponudnik storitve* lahko kadar koli prekliče ta *sporazum* ob koncu koledarskega meseca s 90-dnevnim odpovednim rokom.
- (c) Poleg pravice do prekinitve na podlagi 7(a) (Trajanje in prenehanje) lahko *ponudnik storitve* prekine ta *sporazum* iz upravičenega razloga, o čemer pisno obvesti *stranko*, če *stranka* krši obveznosti, določene v *smernicah za uporabo platforme* in/ali 11 (Skladnost).

8. Zaupnost

Subjekt, ki prejme informacije, ima lahko dostop do *zaupnih informacij* subjekta, ki razkrije informacije.

8.1. Omejitve pri razkrivanju

- (a) Subjekt, ki prejme informacije, *zaupnih informacij* subjekta, ki razkrije informacije, ne sme razkriti v nobeni obliki, nobeni tretji strani, posamezniku ali subjektu razen zaposlenim subjekta, ki prejme informacije, ali subjekta, ki razkrije informacije, povezanim družbam oz. posrednikom, ki morajo imeti dostop do takšnih *zaupnih informacij*. V tem primeru subjekt ki prejme informacije, zagotovi, da vse zaposlene, povezane družbe in zastopnike subjekta, ki prejme informacije, zavezuje obveznost nerazkritja podatkov, ki zagotavlja enako stopnjo zaščite kot je predpisana v tem *sporazumu*.
- (b) Vsako nepooblaščenno razkritje ali uporaba *zaupnih informacij* pri zaposlenih subjekta, ki prejme informacije, povezanih družbah, podizvajalcih ali posrednikih pomeni kršitev tega *sporazuma* s strani subjekta, ki prejme informacije. V tem primeru je subjekt, ki prejme informacije, odgovoren subjektu, ki razkrije informacije, v enakem obsegu, kot če bi kršitev storil subjekt, ki prejme informacije.

8.2. Razumna stopnja skrbnosti

Subjekt, ki prejme informacije, bo varoval *zaupne Informacije* z najmanj enako skrbnostjo in preudarnostjo kot subjekt, ki prejme informacije, uporablja za poslovne skrivnosti in v nobenem primeru ne bo uporabil manj od razumne mere skrbnosti.

8.3. Izjeme zaupnosti

Zaupne informacije ne vključujejo informacij, ki

- (a) jih je stran, ki informacije prejme, poznala preden jih je razkrila stran, ki informacije razkrije;
- (b) so postali splošno javno znani (brez posredovanja stran, ki informacije prejme);
- (c) jih je stran, ki informacije prejme, pridobila od tretja stran brez obveznega varovanja zaupnosti v odnosu do stran, ki informacije razkrije;
- (d) veljajo za dodatne podatke zaradi zagotavljanja *storitev*.

8.4. Dovoljenja pri razkrivanju

Subjekt, ki prejme informacije, lahko razkrije *zaupne informacije*, če je takšno razkritje zahtevano v skladu z veljavno zakonodajo ali vladnimi predpisi pod pogojem, da je subjekt, ki prejme informacije, predhodno obvestil subjekt, ki razkrije informacije, po e-pošti skupaj s pisnim obvestilom in je poskrbel za ustrezne ter zakonske ukrepe v izogib in minimiziranje stopnje razkritja.

8.5. Obdobje veljave in zamenjava

Določbe 8 (Zaupnost) veljajo tudi po preteku tega *sporazuma* a obdobje 5 let od datuma prekinitve tega *sporazuma*.

8.6. Posredovanje podatkov in informacij

V primeru, da *stranka* deluje kot posrednik na *platformi* in tako uporablja funkcijo „podrejene dodelitve“, mora *stranka* zagotoviti, da je *stranka* upravičena do posredovanja podatkov/informacij s *platforme* podizvajalcu/pogodbeniku. Če *stranka* ni upravičena za takšno dejanje, lahko *stranka* takšne podatke/informacije izbriše.

9. Garancija. Okvare programske opreme

9.1. Splošno

- (a) *Ponudnik storitve* jamči, da se lahko *storitve* uporabljajo v skladu z določbami *sporazuma*. Pravice v primeru napak so izključene pri manjših ali nepomembnih odstopanjih od dogovorjenih ali pričakovanih lastnosti ali v primeru manjše okrnjenosti uporabe. Opisi izdelkov ne predstavljajo jamstva, razen če so bili posebej dogovorjeni v pisni obliki. Zlasti funkcijska oslabitev ne predstavlja napake, če izvira iz napak strojne opreme, okoljskih pogojev, napačnega upravljanja, okvarjenih podatkov ali drugih okoliščin, ki spadajo na področje *strankinega* tveganja.
- (b) *Ponudnik storitve* po lastni presoji odpravi napake programske opreme tako, da zagotovi novo različico *platforme* ali opiše razumne načine, kako se izogniti posledicam napake.
- (c) Napake je treba sporočiti v pisni obliki ali po e-pošti in priložiti opis simptomov napake, čim boljša pisna dokazila, tiskane oblike ali druge dokumente, ki prikazujejo napake.

9.2. Dogovorjena učinkovitost

Ponudnik storitve ni subjekt v pogodbah med *stranko* in drugimi *uporabniki*. *Ponudnik Storitve* nikakor ne garantira, da bo katera koli ponudba ustrezala pripadajoči zahtevi ali da bo sklenjena pogodba za tovor med *stranko* in drugimi *uporabniki*.

9.3. Natančnost in pravilnost

- (a) *Ponudnik storitve* ni odgovoren za točnost in pravilnost informacij, ki jih vnesejo ali zagotovijo *stranka* ali drugi uporabniki, ko uporabljajo *platforme*.
- (b) *Ponudnik storitve* odgovarja izključno za točen izračun rezultatov, ki temeljijo na zagotovljenih informacijah in za pravilen prenos podatkov.

9.4. Zanesljivost uporabnikov

Ponudnik storitve ne daje nobenega jamstva glede zanesljivosti drugih uporabnikov.

10. Odgovornost

10.1. Splošno

- (a) Če tukaj ni drugače določeno, vključno s spodnjimi določbami, *ponudnik storitve* odgovarja na podlagi zakonskih določb za kršitve pogodbenih in nepogodbenih obveznosti.
- (b) *Ponudnik storitve* ne glede na pravno podlago odgovarja za škodo, ki je povzročena namerno ali je posledica velike malomarnosti. V primeru manjše malomarnosti *ponudnik storitve* odgovarja samo za škodo zaradi kršitve bistvenih pogodbenih obveznosti (tj. obveznosti, katerih izpolnitev je potrebna za pravilno izvajanje pogodbe, na katere se ima *stranka* pri *storitvah* pravico redno zanašati). V tem primeru je odgovornost *ponudnika storitve* omejena le na povračilo za predvidljivo in značilno škodo.
- (c) Taka omejitev odgovornosti ne velja za škodo, povezano z življenjem, telesom ali zdravjem.
- (d) *Stranka* se zaveda, da *ponudnik storitve* ni ustvaril in/ali preverjal podatkov, posredovanih prek platform. *Ponudnik storitve* zato ne odgovarja za takšne podatke, njihovo zakonitost, popolnost, točnost ali ažurnost. *Ponudnik storitve* ne more odgovarjati za to, da za takšne podatke ne veljajo pravice *intelektualne lastnine* tretje strani. *Ponudnik storitve* ne odgovarja za škodo, ki izhaja iz prenosa ali drugačne uporabe nepreverjenih škodljivih podatkov prek *platform*.
- (e) Zgoraj navedene omejitve odgovornosti ne veljajo, če je *ponudnik storitve* zlonamerno opustil razkritje napake ali je prevzel garancijo za stanje *storitev*. Enako velja za *strankine* zahteve na podlagi Zakona o odgovornosti za izdelek (Produkthaftungsgesetz), če obstaja.
- (f) Izključitev ali omejitev odgovornosti za škodo *Ponudnika Storitve* velja tudi za osebno odgovornost za škodo, ki jo povzročijo njegovi predstavniki, zaposleni in drugi odškodninsko odgovorni zastopniki.

10.2. Podatki in povezave

Ponudnik storitve se poveže s storitvami oz. nudi storitve *storitvenih partnerjev* (v nadaljevanju *druge storitve*) na spletnem mestu *ponudnika storitve* oziroma drugače prek *storitev*, s katerimi so vsebina, izdelki in/ali storitve na voljo *stranki*. Ti *storitveni partner* lahko uporabljajo svoje lastne pogoje in določila ter politike o zasebnosti in *strankino* uporabo teh *drugih storitev* ureja in je predmet takšnih pogojev in določil ter politik o zasebnosti. V primerih, ko je zagotovljena neposredna povezava do *drugih storitev*, *ponudnik storitve* ne jamči, odobrava ali podpira teh *drugih storitev* in ne odgovarja zanje ter za kakršne koli druge izgube ali težave, ki so posledica *strankine* uporabe takšnih *drugih storitev*, saj je to zunaj nadzora *ponudnika storitve*. *Stranka* potrjuje, da *ponudnik storitve* lahko dovoli *storitvenim partnerjem* dostop do *strankinih podatkov*, ki se uporabljajo v povezavi s *storitvami*, kot je zahtevano za medsebojno delovanje *drugih storitev* s *storitvami*. *Stranka* zastopa in jamči, da *strankina* uporaba katerih koli *drugih storitev* predstavlja *strankino* neodvisno soglasje za dostop do in uporabo *strankinih podatkov* s strani *storitveni partnerjev*.

10.3. Izguba podatkov

Odgovornost za izgubo podatkov je omejena na običajne stroške povrnitve, ki bi nastali v primeru rednih ustreznih varnostnih kopij, ki jih naredi *stranka*. *Strankina* odgovornost za zmanjšanje škode ostane nespremenjena.

10.4. Brez stroge odgovornosti

Pri tem je izključena stroga odgovornost *ponudnika storitve* za okvare, ki obstajajo v času sklenitve pogodbe v smislu zakonskih pogojev za najem (člen §536a Civilnega zakonika (, v nadaljevanju *BGB*) je izključen). To ne vpliva na člen §536a, oddelek 2, stavka 1 in 2 Civilnega zakonika *BGB*).

11. Skladnost

11.1. Splošno

- (a) Oba *subjekta* se strinjata in bosta zagotovila, da njihovi zaposleni predstavniki ali posredniki izvajajo obveze, navedene spodaj, ali uporabljajo *platformo* in *storitve* skladno z vso veljavno zakonodajo, predpisi, uredbami, pravili in standardi ter upoštevajo pravila *ponudnika storitev*, ki so na voljo na <https://www.transporeon.com/us/about-us/#c10797>.

- (b) Za namene etičnega in celovitega izvajanja poslovnih dejavnosti se oba *subjekta* obvezujeta, da bosta upoštevala vse veljavne zakone na naslednjih področjih, tj. standardi človekovih pravic in pravičnega poslovanja, zdravje in varnost pri delu, boj proti podkupovanju in korupciji, konkurenčnost in protimonopolna pravila, zakonodaja na področju trgovine in izvoza, finančna integriteta, zakoni o izvozu, zakoni za preprečevanje pranja denarja in financiranja terorizma ter okoljevarstveni zakoni.

11.2. Poročanje o incidentih

- (a) Standardi delovanja, opredeljeni v tem *sporazumu*, so izjemnega pomena pri doseganju in trenutnih odnosih med *subjekti*.
- (b) *Stranka* mora *ponudnika storitve* nemudoma pisno ali prek e-pošte obvestiti v primeru:
- pozitivnega rezultata pri pregledu omenjenih sankcijskih seznamov ali če katera koli oseba pod nadzorom stranke ali povezana s *stranko* postane navedena na sankcijskem seznamu in uporablja *platformo* ali *storitve*.
 - vedenja ali razumno utemeljenega suma, da se oseba pod nadzorom stranke ali povezana s *stranko* udeleži ali se želi udeležiti pri dejanjih podkupovanja v povezavi z uporabo *platforme* oz. *storitev*.
 - vedenja ali razumno utemeljenega suma o dejavnostih za preprečevanje konkurence oz. nezakonitih ali neetičnih dejavnostih v povezavi s tem *sporazumom*.

12. Odškodnina

12.1. Strankina odškodnina

- (a) *Stranka* je odgovorna v primeru zahtevkov tretjih strani za poškodbe, ki jih povzročijo takšne tretje strani v povezavi s *strankino* uporabo *storitev*.
- (b) *Stranka* se strinja, da bo *ponudnik storitve* in vse *storitvene partnerje*, dajalce licenc, pridružene družbe, izvajalce, uradnike, direktorje, zaposlene, predstavnike in zastopnike razbremenila, zaščitila, odvezala in zavarovala pred kakršnimi koli zahtevki tretje strani za škodo (dejansko in/ali posledično), tožbe, postopke, zahteve, izgube, obveznosti, stroške in izdatke (vključno z razumnimi sodnimi stroški), ki jih je utrpela ali jih je razumno povzročil *ponudnik storitve* zaradi ali v zvezi s/z:
- strankinimi* malomarnimi dejanji, opustitvami ali namernimi kršitvami;
 - strankino* kršitvijo tega *sporazuma* in/ali
 - Strankinim* kršenjem katerega koli zakona, med drugim tudi zakonov o varstvu podatkov oziroma pravic katere koli tretje strani.
- (c) Če *ponudnik storitve* na podlagi razdelka 12 (Odškodnina) zahteva odškodnino, *ponudnik storitve* o tem *stranko* pravočasno obvesti v pisni obliki ali prek e-pošte.
- (d) V tem primeru je *ponudnik storitve* upravičen do dodelitve pravnega svetovalca in nadzora nadaljnjih postopkov za varovanje njegovih pravic ter lahko zahteva povračilo za nastale stroške.

12.2. Odškodnina, ki jo zagotavlja *ponudnik storitve*

- (a) *Ponudnik storitve* bo *stranko* zavaroval pred odškodninskimi zahtevki tretjih strani, ki so nastali zaradi kršenja njihovih pravic *intelektualne lastnine* pri uporabi *storitev* s strani *stranke* v obsegu, opredeljenem v razdelku 10 (Odgovornost).
- (b) *Stranka* bo *ponudniku storitve* nemudoma posredovala takšen zahtevek v pisnem obvestilu ter ga obenem o tem obvestila po e-pošti. *Stranka* bo *ponudniku storitve* prav tako zagotovila informacije, ustrezno pomoč in izključno pooblastilo za obrambo ali poravnavo v primeru takšnega zahtevka.
- (c) *Ponudnik Storitve* lahko po lastni presoji
- za *stranko* pridobi pravico do nadaljnje uporabe *storitev*,
 - nadomesti ali spremeni *storitve*, da odpravi kršitev, ali
 - preneha zagotavljati *storitve* in *stranki* povrne višino stroškov, ki izhajajo iz tega.

12.2.2. Brez obvez

- (a) Če *stranka* razreši spor s tretjo stranjo brez predhodnega pisnega soglasja *ponudnika storitve*, *ponudnik storitve stranki* ni primoran povrniti odškodnine skladno s provizijami, navedenimi v razdelku 12.2 (Odškodnina, ki jo zagotavlja *ponudnik storitve*).
- (b) *Ponudnik storitve stranki* ni obvezan plačati odškodnine, če kršitev izhaja iz nepooblaščenega spremembe *storitev*, ki jo opravi *stranka* ali tretja stran v imenu *stranke* ali uporabe *storitev* v kombinaciji s strojno opremo, programsko opremo ali materialom, ki ga *ponudnik storitve* ni odobril, razen če *stranka* dokaže, da taka sprememba ali uporaba ni vplivala na domnevno kršitev iz zahtevka.

13. Reference

Ponudnik storitve je upravičen do uporabe *strankinega* imena ter *strankinega* logotipa za referenčne namene v zunanjih komunikacijah in komercialnem materialu, zlasti na spletnem mestu, začetni strani in uradnih kanalih na družbenih omrežjih *ponudnika storitve* ter v ciljnih e-poštnih kampanjah, v mapah, brošurah in na spletnih mestih. S tem *stranka ponudniku storitve* podeljuje preprosto, prenosljivo in nepreklicno pravico do uporabe njenega imena in logotipa. O kakršni koli nadaljnji uporabi se je treba s *stranko* vnaprej dogovoriti.

14. Sodna pristojnost in veljavna zakonodaja

- (a) Ta *sporazum* je sestavljen izključno na podlagi materialnega prava Nemčije, ki se zanj tudi uporablja, z izjemo Konvencije Združenih narodov o pogodbah o mednarodni prodaji blaga (CISG).
- (b) Za vse pravne spore je sodno pristojen Ulm, Vokietija.
- (c) Kraj izvajanja dostave in plačila *storitev* je sedež *ponudnika storitve* v Nemčiji.

15. Razlaga

Če je posamezna določba *sporazuma* v celoti ali enem delu neveljavna ali postane neveljavna, to ne vpliva na veljavnost preostalih določb.

16. Naloga

Stranka nima pravice prenesti nobene pravice in obveznosti po *sporazumu* brez predhodnega pisnega soglasja *ponudnika storitve*, če zadevni zahtevek ni denarni zahtevek.

17. Izjave

- (a) Oba *subjekta* vse pravno relevantne izjave, povezane s tem *sporazumom*, posredujeta v pisni obliki ali prek e-pošte.
- (b) *Stranka* mora kontaktne podatke posodabljati in *ponudnika storitve* nemudoma obvestiti o kakršni koli spremembi.

18. Spremembe

- (a) *Ponudnik storitve* ima pravico spremeniti *sporazum*, če je to potrebno zaradi tehničnega razvoja, sprememb zakonodaje in širitve *storitev* ali drugih primerljivih razlogov. Če spremembe bistveno rušijo pogodbeno ravnotežje med *subjektoma*, ne bodo postale veljavne.
- (b) *Ponudnik storitve* bo *stranki* vsaj 45 dni pred uveljavitvijo sprememb posredoval pisno obvestilo (ter prek e-pošte ali neposrednega sporočila v *platformi*).
- (c) *Stranka* se strinja s spremembami, če *stranka* ne poda pisnega ugovora ali prek e-pošte oz. *platforme* najkasneje po 4 tednih po prejetju obvestila od *ponudnika storitve*. Ta posledica bo izrecno poudarjena v obvestilu o spremembi. Če se *stranka* ne strinja s spremembami, lahko obe *subjekt* prekineta ta *sporazum*, vendar ukinitve začne veljati šele z datumom uveljavitve ustreznega obvestila.

19. Celovitost sporazuma

- (a) Ta *sporazum* predstavlja celoten sporazum med *subjektoma* in nadomešča vsa predhodna z njim povezana pogajanja, zagotovila ali sporazume v ustni oz. pisni obliki.
- (b) *Ponudnik storitve* ne priznava nobenih *strankinih* pogojev, ki od njega odstopajo ali so dodani.

20. Zavezujoča različica

V primeru nasprotij med angleško in prevedeno različico prevladuje različica v angleščini.

Platform User Agreement

between
 Transporeon GmbH
 Heidenheimerstr. 55/1
 DE-89075 Ulm

hereinafter **Agreement**

and

hereinafter **Service Provider**

customer (hereinafter **Customer**)

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

Definitions

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*

Confidential Information: Non-public information in any form provided to the receiving party by the 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

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

Establishment: A branch, agency or any other establishment of *Customer* that implies the effective and real exercise of activity through stable arrangements

Goods Recipient: recipient of the goods that *Carrier* delivers according to the transport order of *Shipper*

In-House System: ERP system (e.g. SAP ERP, JD Edwards)

Intellectual Property: Any patents, designs, models, drawings, copyrights, software and database rights, trademarks, 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 at https://legal.transporeon.com/transporeon_entities.pdf

Platform: Cloud-based communication and transaction platform enabling as well electronic transportation procurement and freight cost management operated by *Service Provider* for commercial customers (business to business)

Platform Usage Guidelines: A set of rules for the usage of *Platform* including security principles, conduct on *Platform* and user account 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 at https://legal.transporeon.com/transporeon_service_providers.pdf

Services: *Services* and/or works provided by *Service Provider*

Shipper: A producer, distributor or recipient of goods; company which orders services from *Supplier*

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

System Requirements: Technical requirements regarding hardware and software to be met by *Customer's* systems in order to be able to use *Platform* and *Services*, listed at <http://www.transporeon.com/en/system-requirements>

Transporeon Trucker: Transporeon Trucker for drivers; an application installed on mobile devices, provided by *Service Provider*

Transporeon Visibility: All *Services* offered on *Platform* that enable tracking status messages in connection with the execution of the transport

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 desires to increase the efficiency of its logistics processes. For this purpose, *Service Provider* provides *Customer* with access to *Platform*. In connection with the usage of *Platform* by *Customer*, *Service Provider* may also render IT services, including consultancy, project management, customising and support.

1. Contract conclusion

This *Agreement* is considered concluded once *Customer* concluded the registration process that includes the link to this *Agreement*. By following the steps in the Registration centre, *Customer* will conclude this *Agreement* by clicking "Register". The online registration must be completed in full and truthfully. *Service Provider* may request the authorised signatory of *Customer* to show suitable evidence of authority to represent *Customer*. *Service Provider* reserves the right to refuse registration or to revoke or to delete such in case of misuse or if false information is provided.

2. Security of Platform and Services

2.1. Platform Usage Guidelines

- (a) *Customer* will have access to *Platform* by way of its *access data*. *Customer* agrees to keep its *access data* confidential and to restrict any unauthorised access to the account. *Customer* undertakes to change its password on a regular basis.
- (b) *Customer* agrees to comply with the conditions stipulated in *Platform Usage Guidelines* which can be accessed at <https://www.transporeon.com/en/pug>. *Service Provider* may update *Platform Usage Guidelines* from time to time in compliance with the conditions specified in 18 (Changes). *Customer* shall make *Platform Usage Guidelines* available for each *User* of its accounts. *Customer* remains responsible for all the activities that occur under each account that it has on *Platform* and for the conduct of its *Users*.

2.1.2. Consequences for breach of Platform Usage Guidelines

- (a) *Service Provider* reserves the right to block *Customer's* access to *Platform* in case of any infringement of *Platform Usage Guidelines* and to delete or block *Customer's* data infringing the provisions of this *Agreement*.
- (b) *Service Provider* will inform *Customer* about blocking of its access and blocking or deletion of its data in writing or via e-mail.
- (c) *Service Provider* is entitled to inform *Shippers* of *Customer* about an impending or actual blocking of *Customer's* access to *Platform*.

2.1.3. Technical data transfer

The use of insecure data transmission routes, in particular HTTP or FTP, can result in third parties accessing the transmitted data, reading or changing these data. In order to prevent this risk, *Service Provider* offers secure data transmission routes, e.g. HTTPS, FTPS or AS2. If *Customer* nevertheless decides to use insecure transmission routes, *Customer* is solely responsible for any damages that may result therefrom.

3. Rights of use

- (a) *Service Provider* grants to *Customer* a right to access and use *Platform* strictly for the purpose and duration of this *Agreement*. *Service Provider* may introduce new releases, versions, updates and upgrades of *Platform* from time to time. In this case, the preceding sentence shall apply accordingly.
- (b) *Customer* needs to match *System Requirements* to be able to access and use *Platform*. *System Requirements* may be updated from time to time in compliance with the conditions specified in 18 (Changes).
- (c) *Customer* undertakes to use *Platform* and *Services* solely for its own internal business purposes in accordance with this *Agreement*. *Customer* may not use *Services* or results derived from it for other purposes than originally provided for, e.g. but not limited to creation of own map related profile, a database or a product. *Customer* may not use *Services* for supervision of employees, person tracking etc.
- (d) *Customer* shall not be entitled to provide third parties access to *Platform*, neither for payment of a fee nor free of charge.
- (e) *Service Provider* hereby does not provide *Customer* any licenses and/or *Intellectual Property* (current and/or future).

- (f) Any and all *Intellectual Property* owned by *Service Provider* prior to conclusion of Agreement shall remain the sole property of *Service Provider*. Any and all *Intellectual Property* that results from, is obtained or developed in connection with this Agreement and the provision of *Services* after conclusion of Agreement shall be owned by *Service Provider*.
- (g) *Service Provider* hereby offers *Services* also to *Customer's* affiliates. *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. *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 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.
- (h) *Customer* confirms that it is entitled to fully represent its affiliates and to establish the rights and obligations of its affiliates under this Agreement. *Customer* shall be liable for its affiliates for all contractual obligations under this Agreement.

4. Data protection and data security, *Customer Data*

4.1. Processing of personal data

- (a) *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.
- (b) *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.
- (c) Where *Service Provider* processes personal data, such processing is strictly limited to what is necessary to perform *Services* as specified in this Agreement taking into account the *Data Subject's* interests.
- (d) 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.
- (e) *Service Provider* processes personal data from *Users* of *Transporeon Visibility*, in particular location data (e.g. GPS position), licence plate. This data is processed, *inter alia*, to bring more transparency to the transportation process. This also covers the estimation of delays, the measurement of transport routes and the optimisation of predictions for transport times (= "ETA" calculations). In the event of usage via *Transporeon Trucker*, the data is processed in accordance with Art. 6 Para. 1 lit. a) GDPR if the respective driver has given his explicit consent. In all other cases, see *Customer's* responsibilities in 4.3.3 (Consent of Data Subjects).
- (f) *Service Provider* processes personal data from *Users* of *Transporeon Visibility* provided by *Service Partners*, in particular location data (e.g. GPS position), licence plate. The transfer of personal data from *Service Partner* to *Service Provider* is based on consent in accordance with Art. 6 Para. 1 lit. a) GDPR, if the respective *Data Subject* has given its explicit consent. Insofar as the purpose relates to the execution of a contract agreed with *Customer* or the provision of *Services* requested by *Customer*, the legal basis for the transfer is Article 6 Para. 1 lit. b) GDPR. Other than that, the legal basis for the transfer is Art. 6 Para.1 lit. f) GDPR, whereby *Service Provider* may use personal data if it is deemed necessary on the basis of its legitimate interests.
- (g) *Service Provider* processes the full name, the position and the business contact data of *Customer's* employees and representatives for product information and customer relationship purposes according to Art. 6 Para. 1 (f) GDPR.

4.2. Processing of non-personal data

- (a) For the purposes of providing its *Services* under this Agreement and to enable a quick and smooth onboarding, *Service Provider* is asked from time to time by *Shippers* to forward *Customer's* data to *Shippers*. *Service Provider* processes non-personal data including, but not limited to the following:
- date since when *Customer* is using *Platform*
 - which contract version of this Agreement *Customer* concluded
 - which modules *Customer* uses
 - which interfaces *Customer* has with *Service Provider*
 - status of *Customer's* onboarding
 - kind of trainings *Customer* received from *Service Provider*
 - number of devices used for *Transporeon Visibility*
 - information about the steps *Customer* takes in order to implement *Visibility Services* (e.g. organisation of internal trainings with the driver)
- (b) *Service Provider* may use one or more of the above mentioned non-personal data in addition with other criteria for the purpose of generating the Partner Performance Score, a feature created to provide competitive advantage for *Customer* and to enable *Customer* to enter into new business opportunities with *Shippers* on *Platform*.

4.3. Obligations under data protection law

4.3.1. 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 4.1(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).

4.3.2. 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 4.1(b) (Processing of personal data)) of *Service Provider*.

4.3.3. Consent of *Data Subjects*

- (a) *Customer* shall obtain, if necessary according to 4.1(b) (Processing of personal data), *Data Subjects'* informed and effective consent pursuant to Art. 6 Para. 1 (a) GDPR with the processing of their personal data within the scope of this *Agreement*. This consent shall in particular allow the transfer of the personal data to *Service Provider*, *Local Subsidiaries* and *Service Partners*, as well as the transfer of personal data between them.
- (b) *Customer* shall, in case a consent was obtained, monitor the continued effectiveness of *Data Subjects'* consent. If such consent is withdrawn, *Customer* shall promptly inform *Service Provider* in writing or via e-mail.
- (c) When using *Transporeon Visibility*, *Customer* is responsible for informing *Data Subjects* and obtain their consent that their personal data such as license plate and location data of the vehicle may be shared via *Platform*, that this data is collected for the purposes mentioned in 4.1(d) (Processing of personal data) and that this data will be made visible for the parties within the transportation chain, that is *Carriers*, *Suppliers*, *Shippers*, and respective *Service Partners* for the purpose of processing and monitoring the performance of the transportation orders to which such data relates. This responsibility includes informing *Data Subjects* and obtain their consent, that the above-mentioned parties within the transportation chain may also allocate a vehicle to a transport. This allocation, normally done by *Customer*, is the prerequisite for the location data of the vehicle being shared via *Platform*.
- (d) The details on the processing of personal data (Privacy Notice – especially for drivers) for drivers as *Data Subjects* can be found online at https://legal.transporeon.com/DP/RTV/en_Driver_Privacy_Policy.pdf.

4.3.4. Lawfully processing

- (a) *Customer* will ensure the compliance with all applicable data protection laws when using any personal data relating to, contained in or derived from *Services*. This includes, in particular, the compliance with any legal requirements regarding any performance and/or behaviour control of persons using *Services* on behalf of *Customer*, including but not limited to any specific rules on the processing of employees' personal data in the employment context.
- (b) *Customer* will ensure that every *Customer's Establishment* located outside of the European Economic Area concludes the *Standard Contractual Clauses* with *Service Provider* or confirms its compliance with other appropriate safeguards permissible according to the applicable data protection law prior to obtaining an access to the platform unless *Customer's Establishment* is located in a country with an adequate level of protection of personal data according to the decision of the European Commission.
- (c) If *Customer* becomes aware of any data security breach relating to *Services*, *Customer* will promptly inform *Service Provider* about such breach in appropriate manner. If the applicable law requires the communication of any personal data breach to *Data Subjects* or supervisory authorities and the data of *Customer* are concerned, the *Parties* will jointly coordinate the communication.
- (d) If *Customer* uses its own servers for data export via interfaces provided by *Service Provider*, *Customer* is responsible for the ensuring of server security. This includes all measures to ensure the integrity, confidentiality and availability of information and information systems which are usual for the services of the same kind. Examples for such measures are access management, patch management, system hardening and encryption of data transmission.
- (e) *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*, *Local Subsidiaries* and *Service Partners* for the purposes of this *Agreement*.
- (f) *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*.

4.3.5. Indemnification

With regard to any data protection violation by *Service Provider* due to *Customer* failing to comply with its obligations under this *Agreement*, *Customer* will indemnify *Service Provider* in accordance with 12 (Indemnification).

4.4. 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 4.4(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.

5. Modules and *Services* description

Customer can access the document which contains a detailed technical description and conditions for the usage of products, modules, features and *Services* by clicking on <https://www.transporeon.com/en/msd>. *Service Provider* is entitled to update this document from time to time in compliance with the conditions specified in 18 (Changes) provides *Customer* the possibility to access the updated document under the above-mentioned link. The Modules and *Services* description does not represent any guarantee or warranty of any kind and the conditions only apply if the corresponding *Services* are activated for *Customer*. Activation of some modules, features and *Services* are subject to an additional agreement and a separate commercial agreement between *Service Provider* and *Customer*.

6. Service levels. Availability. Support. Remedies

6.1. 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*.

6.2. 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 at <https://www.transporeon.com/en/avd> and incorporated into this *Agreement* by reference. *Service Provider* will update *Availability Description* from time to time in compliance with the conditions specified in 18 (Changes) and provide *Customer* the possibility to access the updated document under the above-mentioned link.

7. Term and termination

- (a) *Customer* may terminate this *Agreement* for convenience at any time subject to a 30-days' notice period to the end of the calendar month.
- (b) *Service Provider* may terminate this *Agreement* for convenience at any time subject to a 90-days' notice period to the end of the calendar month.
- (c) In addition to the termination rights according to 7(a) (Term and termination), *Service Provider* may terminate this *Agreement* for good cause, effective upon written notice to *Customer*, if *Customer* breaches the obligations as stipulated in *Platform Usage Guidelines* and/or 11 (Compliance).

8. Confidentiality

The receiving party may have access to *Confidential Information* of the disclosing party.

8.1. Disclosure restrictions

- (a) The receiving party must not make any of the disclosing party's *Confidential Information* available in any form, to any third party, natural person or legal entity other than the receiving or disclosing party's employees, affiliates or agents with a need to know such *Confidential Information*. In this case, the 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 the receiving party's employees, affiliates, subcontractors or agents shall be deemed a breach of this *Agreement* by the receiving party. In this case, the receiving party shall be liable to the disclosing party to the same extent as if the receiving party committed such breach itself.

8.2. Reasonable care

The receiving party will keep *Confidential Information* secret by using at least the same care and discretion that the 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 the receiving party prior to its disclosure by the disclosing party,
- (b) has become generally available to the public (other than through the receiving party),
- (c) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party,
- (d) is considered as supporting information in order to enable *Services*.

8.4. Disclosure permissions

The receiving party may disclose *Confidential Information* if such disclosure is required according to applicable laws or governmental regulations, provided that the receiving party has previously notified the 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 survive the termination of this *Agreement* for a period of 5 years from the date of effective termination of this *Agreement*.

8.6. Forwarding data and information

In the event *Customer* is acting as a forwarder on *Platform* and is therefore using the "sub assignment" function, *Customer* must ensure that *Customer* is entitled to forward the data/information from *Platform* to a subcarrier/subcontractor. If *Customer* is not entitled to do so, *Customer* has the possibility to delete/edit the data/information.

9. Warranty. Software defects

9.1. General

- (a) *Service Provider* warrants that *Services* may be used in accordance with the provisions of this *Agreement*. Rights in case of defects shall be excluded in case of minor or immaterial deviations from the agreed or assumed characteristics or in case of just slight impairment of use. Product descriptions shall not be deemed guaranteed unless separately agreed in writing. In particular, a functional impairment does not constitute a defect if it results from hardware defects, environmental conditions, wrong operation, flawed data or other circumstances originating from *Customer's* sphere of risk.
- (b) *Service Provider* remedies software defects at its option by providing a new version of *Platform* or by indicating reasonable ways to avoid the effects of the defect.
- (c) Defects must be notified in writing or via e-mail with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects.

9.2. Performance agreed

Service Provider is not a party to the contracts between *Customer* and other *Users*. *Service Provider* does not warrant that any offer will be matched by a corresponding demand or that any freight contract will be concluded and properly performed between *Customer* and other *Users*.

9.3. Accuracy and correctness

- (a) *Service Provider* is not responsible for the accuracy and correctness of the information that *Customer* or other *Users* enter and/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.

9.4. Reliability of *Users*

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

10. Liability

10.1. General

- (a) Insofar as not otherwise provided for herein, including the following provisions, *Service Provider* shall be liable according to the relevant statutory provisions in case of a breach of contractual and non-contractual duties.
- (b) *Service Provider* shall be liable for damages – irrespective for what legal grounds – in case of wilful intent and gross negligence. With slight negligence, *Service Provider* shall only be liable for damages from the breach of a material contractual duty (i.e. those duties whose fulfilment is required in order to allow the contract to be duly performed and in relation to which *Customer* is entitled to regularly rely on for *Services*); in this case *Service Provider's* liability is, however, limited to the reimbursement of the reasonably foreseeable, typically occurring damages.
- (c) This limitation of liability does not apply to damages from the injury to life, body or health.
- (d) *Customer* is aware that *Service Provider* has not created and/or examined the data transmitted via *Platform*. Therefore, *Service Provider* is not liable for such data, their legality, completeness, accuracy or up-to-date nature, nor is *Service Provider* liable for such data being free of any third party's *Intellectual Property* rights. *Service Provider* is not liable for damages arising from downloading or another use of unchecked harmful data via *Platform*.
- (e) The limitations of liability stated above shall not apply if *Service Provider* has maliciously failed to disclose a defect or has assumed a guarantee for the condition of *Services*. The same shall apply to claims of *Customer* according to the Product Liability Act (Produkthaftungsgesetz), if applicable.
- (f) To the extent *Service Provider's* liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of its representatives, employees and other vicarious agents.

10.2. Data and links

Service Provider links to or offers services of *Service Partners* (hereinafter *Other Services*) on *Service Provider's* website or otherwise through *Services* for making available content, products, and/or services to *Customer*. These *Service Partners* may have their own terms and conditions of use as well as privacy policies and *Customer's* use of these *Other Services* will be governed by and be subject to such terms and conditions and privacy policies. For the cases where a direct link to *Other Services* is provided, *Service Provider* does not warrant, endorse or support these *Other Services* and is not responsible or liable for these or any losses or issues that result from *Customer's* use of such *Other Services*, since that is outside of *Service Provider's* control. *Customer* acknowledges that *Service Provider* may allow *Service Partners* to access *Customer's* data used in connection with *Services* as required for the inter-operation of *Other Services* with *Services*. *Customer* represents and warrants that *Customer's* use of any *Other Services* represents *Customer's* independent consent to the access and use of *Customer's* data by *Service Partners*.

10.3. Loss of data

Liability for loss of data is limited to the normal recovery expenses that would result in the event of regular appropriate backup copies being made by *Customer*. *Customer's* duty to mitigate damages remains unaffected.

10.4. No strict liability

Any strict liability of *Service Provider* for defects existing at the time of the contract conclusion in terms of the rental provisions of law (§536a Civil Code (Bürgerliches Gesetzbuch, hereinafter BGB)) are hereby excluded. §536a Section 2 sentences 1 and 2 BGB remain unaffected.

11. Compliance

11.1. General

- (a) Both *Parties* shall comply and shall ensure that their representative employees or agents carrying out obligations hereunder or using *Platform* and *Services* comply with all applicable laws, regulations, ordinances, rules and standards, and shall submit to the standard Code of Conduct of *Service Provider* available at <https://www.transporeon.com/us/about-us/#c10797>.

- (b) In order to conduct business activities ethically and with integrity, both *Parties* shall adhere in particular to all applicable laws in the following areas, i.e., human rights and fair labour standards, occupational health and safety, anti-bribery and corruption, competition and antitrust, trade and export laws, financial integrity, anti-money laundering, trade export laws and counter terrorism financing and environmental laws.

11.2. Reporting incidents

- (a) The standards of conduct stipulated in this *Agreement* are critical to its accomplishment and the ongoing success of the relationship between *Parties*.
- (b) *Customer* must inform *Service Provider* immediately in writing or via e-mail in the event of:
- (i) any positive results discovered when reviewing the aforementioned sanctions lists, or if any person under the control or affiliated with *Customer* becomes listed on any sanction list and uses *Platform* or *Services*.
 - (ii) knowledge or reasonably founded suspicion that any person under the control or affiliated with *Customer* is committing or attempting to commit any act of, or in furtherance of bribery or fraud in connection with its use of *Platform* or *Services*.
 - (iii) knowledge or reasonably founded suspicion of any anti-competitive behaviour or illegal or unethical activities in relation to this *Agreement*.

12. Indemnification

12.1. Indemnification by *Customer*

- (a) *Customer* is liable in case of any claims by third parties for damages incurred by such third parties in connection with *Customer's* usage of *Services*.
- (b) *Customer* agrees to indemnify, defend, release, and hold *Service Provider*, and all *Service Partner*, licensors, affiliates, contractors, officers, directors, employees, representatives and agents, harmless, from and against any third party claims, damages (actual and/or consequential), actions, proceedings, demands, losses, liabilities, costs and expenses (including reasonable legal fees) suffered or reasonably incurred by *Service Provider* arising as a result of, or in connection with:
- any negligent acts, omissions or wilful misconduct by *Customer*;
 - any breach of this *Agreement* by *Customer*; and/or
 - *Customer's* violation of any law including but not limited to data protections laws or of any rights of any third party.
- (c) In the event *Service Provider* seeks indemnification from *Customer* according to 12 (Indemnification), *Service Provider* will inform *Customer* promptly in writing or via e-mail.
- (d) In this case, *Service Provider* is entitled to appoint a legal counsel and to control any proceeding necessary to safeguard its rights as well as to demand reimbursement of the associated costs.

12.2. 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 10 (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 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 reasonable expenses resulting therefrom.

12.2.2. 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 12.2 (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.

13. References

Service Provider is entitled to use the name of *Customer* as well as *Customer's* logo for reference purposes in external communications and commercial material, in particular, on *Service Provider's* website, homepage and its official social media channels, targeted e-mail campaigns, as well as folders and brochures, websites. Hereunto *Customer* grants *Service Provider* a simple, transferable, revocable right to use its name and logo. Any further usage will be agreed with *Customer* in advance.

14. Jurisdiction and governing law

- (a) This *Agreement* 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) The place of performance for delivery and payment of the *Services* is the seat of *Service Provider*, Germany.

15. Interpretation

If any individual provision of this *Agreement* is or becomes ineffective in part or in whole, this does not affect the validity of the remaining provisions.

16. Assignment

Customer is not entitled to assign any of the rights and obligations of this *Agreement* without prior written approval by *Service Provider* unless the corresponding claim is a monetary claim.

17. Declarations

- (a) Both *Parties* shall make all legally relevant declarations in connection with this *Agreement* in writing or via e-mail.
- (b) *Customer* will keep its contact data up to date and notify *Service Provider* of any changes without undue delay.

18. Changes

- (a) *Service Provider* is entitled 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. If a change disrupts the contractual balance between *Parties* substantially, such change will not come into force.
- (b) *Service Provider* will give *Customer* at least 45 days prior written notice (also via e-mail or instant message on *Platform*) before the changes enter into effect.
- (c) The changes are deemed approved by *Customer* if *Customer* does not object in writing or via e-mail or via *Platform* within 4 weeks after having received the notification from *Service Provider*. This consequence will be expressly pointed out in the notification. If *Customer* objects to the changes, both *Parties* may terminate this *Agreement* in accordance with the proviso, however, that the termination shall become effective no later than the effective date of the relevant notification.

19. Entire Agreement

- (a) This *Agreement* constitutes the entire agreement between *Parties* and supersedes all prior negotiations, declarations or agreements, either oral or written, related hereto.
- (b) *Service Provider* does not recognise any deviating or supplementary conditions set out by *Customer*.

20. Binding version

In case of contradictions between the English and the translated version the English language version shall prevail.