



LOGISTIK IM FLUSS.

General Framework Conditions for Use of the Platform

(the “**Platform T&Cs**”)

22062018

1 Subject matter

1.1 These Platform T&Cs represent a non-paid framework agreement between TB Digital Services GmbH (“**TBDS**”) and its user (the “**User**”) (TBDS and the User shall each be referred to as a “**Party**” and jointly referred to as the “**Parties**”) for the use of the RIO Platform (the “**Platform**”), which can be found at www.rio.cloud.

The Platform allows the User to make use of paid and free services from TBDS (the “**TBDS Services**”) and/or from third party suppliers (the “**Third-party Services**”, incl. third-party services from MAN Truck & Bus AG) (jointly referred to as the “**Services**”). The Platform T&Cs represent a framework agreement.

Under these Platform T&Cs, the User can make use, free of charge, of basic services from TBDS or MAN Truck&Bus AG, such as mileage, vehicle deployment analysis, etc. (jointly referred to as “**RIO Essentials**” or “**MAN Essentials**” as appropriate – these can be viewed within the service description on the registration page for the RIO Platform and once the User has logged in to www.rio.cloud), provided the vehicles in question are fitted with a RIO Box/TBM3 (the “**Connected Vehicle**”) or other vehicle items (e.g. container, trailer, etc.) equipped with a RIO transmitter unit (the “**Mobile Device**”) that is registered on the Platform. If the User intends to register a Connected Vehicle and/or Mobile Device for a vehicle item belonging to a third party via the Platform, this shall only be permitted with the consent of the third party in question; proof of consent by the third party is to be provided to TBDS upon request.

The use of additional Services takes place on the basis of separately concluded agreements with TBDS or the relevant third-party supplier, for which separate general terms & conditions are to be agreed in addition to these Platform T&Cs (the “**Service T&Cs**”).

1.2 Within the European Union or the European Economic Area and Switzerland, all Services offered via the Platform are provided exclusively to entrepreneurs within the meaning of Section 14 of the German Civil Code, unless otherwise expressly provided for by specific Services and their associated Service T&Cs. The Services are only provided for Connected Vehicles and/or Mobile Devices that are physically located within the European Union, the European Economic Area or Switzerland.

1.3 Section 312i(1)(1)(1)-(3) and Section 312i(1)(2) of the German Civil Code shall not apply with regard to the conclusion of these Platform T&Cs.

2 Conclusion of agreements for TBDS Services and Third-party Services

2.1 The use of any TBDS Service takes place on the basis of an agreement that is to be concluded separately with TBDS online; that agreement is based on our Service T&Cs. Should a User wish to make use of a TBDS Service, it must click on the appropriate button within the Platform to purchase the relevant TBDS



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Service. The User must then accept the corresponding Service T&Cs and click on the appropriate button to complete the ordering process. Completion of the ordering process does not immediately give rise to an agreement with TBDS; this simply results in the submission of an order by the User. The agreement concerning the TBDS Service in question shall only be concluded once acceptance has been confirmed by TBDS (the User shall be informed of this by email or via the Platform).

- 2.2** The use of any Third-party Service takes place on the basis of an agreement that is to be concluded separately with the relevant third-party supplier, based on the Service T&Cs of that third-party supplier. The Service T&Cs for a Third-party Service are concluded exclusively between the User and the third-party supplier (i.e. not with TBDS). During the conclusion of such agreements, TBDS shall neither represent the third-party supplier nor provide the service in question and shall therefore not be under any obligation with regard to the User.

Should a User wish to make use of a Third-party Service, it must click on the appropriate button within the Platform to purchase the relevant Third-party Service. The User must then accept the corresponding Service T&Cs and click on the appropriate button to complete the ordering process. Completion of the ordering process does not immediately give rise to an agreement with the third-party supplier; this simply results in the submission of an order by the User. The agreement concerning the Third-Party Service shall only be concluded once acceptance has been confirmed by the third-party supplier (the User shall be informed of this in writing by email or via the Platform). Within the scope of this ordering and acceptance process, TBDS does not act as a representative of the third-party supplier or the User; it simply acts as the recipient of the declarations of intent issued by the User and the third-party supplier. Payments made in connection with the TBDS Services and the Third-party Services are handled in accordance with Article 4.2 below.

- 2.3** Section 312i(1)(1)-(3) and Section 312i(1)(2) of the German Civil Code shall not apply with regard to the conclusion of the Service T&Cs, unless otherwise provided for in the respective Service T&Cs.

3 Access to the Platform and usage rights for the Platform

- 3.1** The User shall be responsible for ensuring technical access to the Platform. The Platform is accessed remotely via the internet. Further details can be found in the technical access requirements, which also provide details of additional technical access requirements for RIO Essentials. These can be viewed on the registration page for the RIO Platform and once the User has logged in to www.rio.cloud.

- 3.2** Between now and midnight on 31 December 2018, within the scope of these Platform T&Cs, TBDS shall be obliged to guarantee an availability level of 95% each year during operating hours; this will be reported by the Platform upon remote access. With effect from 01 January 2019, within the scope of these Platform T&Cs, TBDS shall be obliged to guarantee an availability level of 99% each year during operating hours; this will be reported by the Platform upon remote access. No liability shall be incurred in connection with



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additional availability; individual Service T&Cs may include additional regulations. Maintenance windows between Saturday 22:00 and Sunday 16:00 CET shall be excluded from the obligatory availability and operating hours specified in this Article 3.2.

- 3.3** To enable the User to make use of the Platform, the content of the Platform and the apps that can be downloaded from the Platform, TBDS shall grant the User a non-exclusive, non-transferable, non-sublicensable and regionally unrestricted usage right, the validity of which shall be limited to the duration of these Platform T&Cs. This right does not include editing rights.
- 3.4** TBDS reserves the right to revoke the usage rights granted to a User in the event that the User in question wilfully damages the Platform, breaches these Platform T&Cs or uses the Platform in a manner that is not consistent with its usage rights (see Article 3.3 above).

4 *Costs and processing of payments using a payment service provider*

- 4.1** The use of the Platform under these Platform T&Cs is free of charge for the User. Costs for the Services that the User makes use of shall be determined in accordance with the content of the Service T&Cs, which are to be concluded separately.
- 4.2** If, according to the Service T&Cs, fees are to be paid to TBDS or to third-party suppliers for the use of those Services, these shall be invoiced to the User centrally by TBDS and payment shall be made by the User exclusively to the payment service provider, Stripe Payments UK Limited, 7th Floor, The Bower Warehouse, 211 Old Street, London, EC1V 9NR, United Kingdom (the “**Payment Service Provider**”); following that payment, the User shall be deemed to have fulfilled its payment obligations with regard to TBDS and/or the third-party supplier. This means that all payments made by the User, which it owes to TBDS or the third-party supplier following the use of TBDS Services or Third-party Services in accordance with the relevant Service T&Cs, are to be made to the Payment Service Provider (and not to the third-party supplier and/or to TBDS).

If, within the scope of the United Kingdom’s exit from the European Union (Brexit), it becomes necessary to use a payment service provider that is licensed within the European Union (i.e. outside of the United Kingdom), TBDS shall be entitled to request that the User pay its fees to an alternative payment service provider licensed within the European Union (belonging to the Stripe Group in particular) in accordance with the regulations set out in the previous paragraph. This shall not require the consent of the User as is set out in Article 5 below.

- 4.3** The prices and the aforementioned payments shall exclude statutory value-added tax or comparable taxes. Taxes of this nature shall be charged to the User by TBDS in addition to the agreed payment.

In the event that a reverse charge mechanism or a comparable simplification method is to be used (according to which the recipient of the supply or the service is obliged to submit a self-declaration or to



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deduct value-added tax or comparable taxes), the user must perform the self-declaration or submit the tax deduction to the competent tax authority within the prescribed period. In the event that a mechanism of this nature is to be used on an optional basis, the parties shall agree upon the application of that mechanism. Irrespective of this, the prices and payments shall, in both cases, be calculated without value-added tax or comparable taxes, and payments made by the User to TBDS shall be equal to the contractually agreed price, without any deductions.

4.4 The User and TBDS shall each be responsible for their own income taxes based on their respective earnings.

The prices and the aforementioned payments shall be understood to be exclusive of withholding tax or comparable taxes. Should the payment be subject to statutory withholding tax, the User shall not be permitted to deduct withholding tax deduction amounts, in accordance with the law of the country in which it is based, from the payment made to TBDS. In addition to the payment of the agreed amount to TBDS, the User must pay taxes of this nature from its own account to the appropriate authorities on behalf of TBDS.

Should a Double Taxation Convention (“*DTC*”) exist between the countries in which TBDS and the User are based, the User shall be permitted to pay the maximum withholding tax contribution provided for in the applicable DTC to the appropriate authorities, provided the conditions for a reduction in withholding tax (where applicable to zero) are present. The user shall be responsible for fulfilling the formal requirements for a reduction in withholding tax (where applicable to zero). Upon conclusion of an agreement, TBDS shall provide the User with a tax residence certificate.

The User shall undertake to provide TBDS with official proof of the tax paid on behalf of TBDS and to provide such proof immediately and without a request having to be made in that regard. In the event that official proof is not provided or is provided late, the User must hold TBDS harmless with regard to any damages resulting from the failure to provide proof or the late submission of that proof.

5 *Amendments to the Platform T&Cs, the Platform and the Service T&Cs*

5.1 Amendments to the Platform T&Cs require the agreement of both Parties, unless otherwise provided for in this Article 5.

5.2 TBDS shall be permitted to make appropriate technical modifications to the Platform, particularly to the extent that these are necessary to improve its functionality or to comply with legal requirements.

5.3 TBDS shall also be permitted to make changes to the content of the Platform, provided this does not reduce the range of services for the User with regard to the use of the Platform and provided the User has not objected to that change in accordance with Article 5.4 below.



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5.4 Reasonable changes to services included on the Platform shall be notified to the User, who shall be provided with the opportunity to object to a change within six (6) weeks. If no objection is made (in writing or by email) to a reasonable change to a service within that six (6) week period, the change to the service shall be deemed to have been accepted, provided the User was made aware of this legal consequence when it was notified of the change in question. Should the User object to a change to a service, TBDS shall have a right of extraordinary termination with regard to the User; in addition, the User shall be entitled to effect the ordinary termination of the Platform T&Cs at any time.

5.5 Amendments to the respective Service T&Cs and the respective Services shall be subject to the regulations contained within the respective Service T&Cs.

6 *Lack of exclusivity/lack of a purchase commitment*

6.1 The Platform Services, the TBDS Services and the Third-party Services shall be provided on a non-exclusive basis for all participants; no Party shall be subject to restraints on competition. The User shall not be subject to minimum purchase commitments for TBDS Services nor for Third-party Services.

6.2 None of the Parties shall be obliged to enter into separate Service T&Cs on the basis of these Platform T&Cs.

7 *Conclusion of the agreement, duration of the agreement and termination rights*

7.1 Completion of the registration process by the User does not immediately give rise to an agreement with TBDS; this simply results in the submission of an order by the User. The agreement shall only be concluded once acceptance has been confirmed by TBDS (the User shall be informed of this by email). In addition, following the submission of an order by the User and prior to acceptance of that order by TBDS, the latter shall reserve the right to perform credit checks, sanction list checks and VAT ID checks with regard to the User. TBDS shall also reserve the right to perform VAT ID checks, credit checks and/or sanction list checks at regular intervals following acceptance of the order.

Use of the Platform and the Services shall be subject to there being no impediments to fulfilment as a result of national or international provisions, particularly export control regulations or embargoes or other such legal restrictions. The User shall undertake to provide all information and documents that are required for the use of the Platform and/or the Services. Any delays resulting from export checks or approval procedures shall result in the temporary suspension of the service. In the event that the necessary approvals are not granted, the Platform T&Cs and the Service T&Cs shall be deemed to have not been concluded; claims for compensation in this regard and in connection with missed deadlines as referred to above shall be excluded.



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- 7.2** These Platform T&Cs between the User and TBDS shall enter into force as soon as TBDS has informed the User of its acceptance by TBDS following completion of the registration process by the User (as described in Article 7.1). The Platform T&Cs are entered into for an indefinite period.
- 7.3** The User shall be entitled to effect the ordinary termination of the Platform T&Cs at any time and without notice. After terminating the Platform T&Cs in accordance with the first sentence of this Article 7.3, the User must wait at least ten (10) working days before entering into the Platform T&Cs once again. TBDS shall be entitled to effect the ordinary termination of the Platform T&Cs, subject to a notice period of three (3) months to the end of the month.
- 7.4** In so far as the User intends to cease using a Connected Vehicle or a Mobile Device for which TBDS Services and/or Third-party Services have been provided, the User must unsubscribe that Connected Vehicle or Mobile Device from the Platform. The TBDS Services and/or the Third-party Services associated with that Connected Vehicle or Mobile Device will then be terminated for that Connected Vehicle or Mobile Device as soon as it is no longer in use. All retention times can be found in the relevant service T&Cs. It is not possible to reregister a Connected Vehicle or Mobile Device that has been unsubscribed in accordance with the first sentence of this Article 7.4 until at least four (4) working days have elapsed.
- If the User sells a vehicle, it shall be obliged to unsubscribe that vehicle from the Platform no later than the time at which the vehicle is handed over to the buyer.
- 7.5** The right to termination for good cause remains unaffected for both parties. Examples of good cause include (i) a significant breach of obligations by one of the Parties that has not been remedied following the expiry of a deadline of thirty (30) days set by the other Party and that makes it unreasonable for the other Party to continue with the agreement, or (ii) the instigation of insolvency proceedings against a Party or the refusal of such proceedings due to a lack of assets.
- 7.6** Regulations concerning the term and termination of the TBDS Services or Third-party Services that the User is making use of can be found in the respective Service T&Cs. In the event that the User or TBDS terminates the Platform T&Cs, this will result in the automatic termination of all Services and Service T&Cs with effect from the same date.

8 User data and data protection

8.1 Order data

Order data from the User, relating to transport orders from its customers (the “**Order Data**”), shall only be used by TBDS for the purposes of fulfilling the Platform T&Cs, for TBDS Services and for Third-party Services during the term of these Platform T&Cs. With the exception of the possible forwarding of Order Data to third-party suppliers to the extent required to enable the Third-party Service to be performed, TBDS shall not forward Order Data from the User to any other third parties.



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8.2 Aggregated data

Aggregated data are data that cannot be traced back to a specific driver by TBDS and that relate to general aspects of Connected Vehicles or Mobile Devices, the use thereof (e.g. their charge level or brake lining wear) and/or the journeys they make (the “**Aggregated Data**”). Those data are transmitted directly to the TBDS Platform from the Connected Vehicle, the Mobile Device or by the User itself and saved on the Platform. When the data is saved, the final 6 digits of the vehicle identification number are masked and the driver ID is deleted or masked. Throughout the term of these Platform T&Cs and beyond, TBDS shall be permitted to use these Aggregated Data and to transfer them to third parties (i) for the purposes of fulfilling the Platform T&Cs and/or the Service T&Cs concluded under it, (ii) for the purposes of the performance of Third-party Services between the User and the Third Party, (iii) for other internal purposes (e.g. increasing security, data analysis, tests or improvement/expansion of offers) by TBDS or affiliates of the MAN or Volkswagen Group, and (iv) to other third parties for marketing purposes, provided the User cannot be identified.

8.3 Personal data

TBDS shall comply with the applicable data protection legislation. This includes the German Data Privacy Act, as amended, and, with effect from 25 May 2018, the General Data Protection Regulation (EU) 2016/679.

8.3.1 Order data processing with TBDS

The collection, processing and use by TBDS of personal data relating to the User and its employees (particularly its drivers) that are transmitted by the Connected Vehicle or Mobile Device, or by the User and/or a third-party supplier (the “**Personal Data**”) takes place on the basis of an Order Data Processing agreement (the “**ODP Agreement**”), which is to be concluded separately by the Parties, and for which the TBDS, in its capacity as the supplier (Order Data Processor) processes the Personal Data on behalf of and in accordance with the instructions issued by the User, in its capacity as the customer (responsible body). Personal Data are transferred to and stored on the Platform by TBDS. Specific details can be found in the ODP Agreement, which is to be concluded separately. ***The user shall remain responsible under data privacy law for data processing within the scope of the commissioned data processing activities. Additionally, the user guarantees that it shall be permissible to process the personal data of the relevant parties (driver and other persons if necessary).***

In so far as the use of individual TBDS Services necessitates further data processing on behalf of the User by TBDS, the regulations of the ODP Agreement shall be supplemented with additional regulations upon the conclusion of the Service T&Cs.



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The processing of Personal Data by TBDS within the scope of the ODP Agreement shall also include the analysis of the driving behaviour of the driver and the use of the Connected Vehicle or Mobile Device and, on the basis of that, suggest to the User ways in which it can increase its efficiency (e.g. training, suggestions for improvement).

8.3.2 Forwarding to third-party suppliers and additional Order Data Processing with third-party suppliers

If, in connection with the use of Third-party Services, it becomes necessary for TBDS to transfer Personal Data to a third-party supplier, TBDS shall thereby be instructed by the User, under the ODP Agreement, to transfer the Personal Data to the third-party supplier or to grant the third-party supplier access to the Personal Data. Where Personal Data is being transferred by the User and/or TBDS to a third-party supplier, where necessary, the User must enter into a separate Order Data Processing Agreement with the third-party supplier at the same time as the Service T&Cs are concluded.

8.3.3 Consent from drivers (driver app)

To enable the collection, processing, use and transfer of Personal Data relating to drivers by means of the Driver App on their smartphone for the purposes of this Article 8, TBDS shall seek individual consent from the drivers directly within their Driver App. The User is aware and accepts that the granting of consent by the drivers is voluntary and that their refusal to grant consent (or withdrawal of consent) will result in the driver in question being unable to use the Driver App, which will result in the inability to provide the Services and/or Third-party Services via the Driver App.

8.3.4 Personal use outside of the ODP Agreement

Above and beyond its role as supplier (Order Data Processor) within the meaning of Article 8.3.1, TBDS shall also process and use Personal Data for its own purposes in its capacity as the responsible authority during the term of these Platform T&Cs, as well as for the following purposes:

- i. The aggregation of data (i.e. data relating to Connected Vehicles or Mobile Devices, whereby the final 6 digits of the vehicle identification number are masked and the driver ID removed) in order to evaluate and analyse the data and, where necessary, to forward it to third parties (outside the Group and affiliates of the MAN or Volkswagen Group), even after the termination of these Platform T&Cs, and
- ii. The analysis of driving profiles, without the final 6 digits and without the driver ID, to enable further testing and development by TBDS and affiliates of the MAN or Volkswagen Group.



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8.3.5 Assurance of the legality of personal data processing

Users are advised that, as data controllers responsible for the processing of personal data, they are subject to comprehensive duties of information disclosure. The data subjects must be furnished with all information in this regard in an accurate, transparent, understandable and easily accessible form, using clear and simple language.

Users must further ensure that the processing of personal data is carried out in a legally compliant way – meaning that it is carried out on the basis of data privacy law.

Please note that if a User has a works council, depending on the TBDS Service and/or Third-party Service being used by the User, it may be necessary to trigger the participation rights of the works council and to conclude a works agreement concerning the appropriate processing of Personal Data relating to employees.

Users must further ensure that as a result of setting up the services employees' personal data is processed solely in order to administer the employment relationship.

8.4 Licence

The User hereby grants TBDS the necessary non-exclusive, global, sublicensable usage and exploitation rights for the purposes of the collection, processing, use and forwarding of relevant data, as described in this Article 8, and for the duration described in this Article 8. That right shall include the right to edit, enhance, duplicate and – to the extent described above – distribute and market the data. This assignment of rights does not constitute consent under data protection law.

8.5 Exemption

In the event that the User fails to unsubscribe a vehicle that it has sold in good time, as described in Article 7.4 above, the User shall hold TBDS harmless with regard to the unauthorised processing of data pertaining to the buyer, except where the User is not at fault in this regard.

9 Liability and warranty

9.1 Liability

9.1.1 TBDS shall be liable for loss or damage that is attributable to intentional acts and/or gross negligence on the part of TBDS or its agents in performance. TBDS shall only be liable for loss or damage resulting from ordinary negligence on the part of TBDS or its agents in performance if a cardinal obligation has been breached. Cardinal obligations are essential contractual obligations that ensure due implementation of the contract in the first place and the observance of which the



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user has relied upon and was entitled to do so. In the event of a breach of these cardinal obligations caused by ordinary negligence, TBDS's liability shall be limited to typically foreseeable loss or damage.

In the event of a breach of these cardinal obligations caused by ordinary negligence, given the fact that RIO Essentials is provided free of charge, TBDS shall also only be responsible for exercising a degree of care that TBDS itself applies to its own affairs.

9.1.2 Otherwise, TBDS's liability for ordinary negligence shall be excluded.

9.2 Other exclusions

9.2.1 TBDS shall not be liable for the proper condition of vehicles belonging to the User for which the Service is being provided. The Service is purely intended to provide support to the User; responsibility for complying with legislation and for the use and condition of the vehicles shall remain with the owner or the driver.

9.2.2 The provision of RIO boxes and/or RIO transmitter units shall not form an integral part of these Platform T&Cs. No warranty shall be provided and no liability shall be assumed in this regard under these Platform T&Cs.

9.2.3 Likewise, no warranty shall be provided and/or no liability shall be assumed under these Platform T&Cs for defective services (particularly for missing or incorrect data) and/or for damages resulting from malfunctions and/or breakdowns of vehicles, RIO boxes and/or RIO transmitter units or from the provision of incorrect data by the User.

9.2.4 In accordance with these Platform T&Cs, TBDS shall provide no warranty and shall accept no liability for Third-party Services provided by third-party suppliers. Warranty claims and claims for liability for proprietary TBDS-Services shall be governed exclusively by the Service T&Cs that are to be concluded in each case.

10 *Confidentiality*

10.1 TBDS and the User shall each undertake to refrain from disclosing confidential information regarding the other Party and to only use such information for the purposes of implementing these Platform T&Cs and for the objective they are intended to achieve. This obligation shall continue to exist for a period of three (3) years following the termination of the agreement. Article 8 shall remain unaffected by the above.

10.2 The confidentiality requirements set out in Article 10.1 above shall not apply in the event that the information in question (i) was already known to the other Party at the time that the Platform T&Cs were concluded, and evidence can be provided of this, or was disclosed at a later date by a third party without



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any breach of the confidentiality agreement having taken place, (ii) was already in the public domain at the time that the Platform T&Cs were concluded or entered into the public domain at a later date, provided this did not occur as a result of a breach of these Platform T&Cs, (iii) is able to be used by a Party with the prior consent of the other Party for purposes that are not covered by these Platform T&Cs, or (iv) must be disclosed as a result of a legal obligation or an order issued by a court or an authority; where permissible and possible, the Party obliged to disclose the information must inform the other Party of this in advance and provide them with the opportunity to take action to prevent the disclosure.

11 Other provisions

11.1 In the event that the Platform becomes unavailable as a result of force majeure, TBDS shall be released from its obligation to ensure the availability of the Platform for the duration and within the scope of the impact of the case of force majeure, provided TBDS has taken appropriate steps to prevent the consequences of this. Force majeure shall be understood to be any event over which TBDS has no influence and that fully or partially prevents TBDS from fulfilling its obligations; this includes fire damage, floods, strikes and lawful lockouts, as well as disruptions to operations for which it is not at fault or official decrees.

TBDS shall immediately inform the User of the occurrence and rectification of a case of force majeure and shall make every effort to rectify the case of force majeure and to limit its impact as far as is possible.

11.2 Should individual provisions of these Platform T&Cs be or become invalid, either in whole or in part, this shall not affect the validity of the remaining provisions. The parties shall agree to replace the invalid provision with an appropriate provision that most closely approximates to the sense and purpose thereof. Any loopholes in these Platform T&Cs shall be closed accordingly.

11.3 Any amendments and supplements to these Platform T&Cs must be effected in writing. The same shall apply with regard to any agreement to cancel this requirement for the written form.

11.4 These Platform T&Cs are available in 23 different languages; in the event of discrepancies, the original German version shall prevail.

11.5 These Platform T&Cs are subject to the law of the Federal Republic of Germany (with the exclusion of the conflict of laws). The exclusive place of jurisdiction for any disputes arising from or in connection with these Platform T&Cs shall be Munich, Germany.