

# Platform terms and conditions

Date: 04 September 2019

## 1. INTRODUCTION

These Platform Terms and Conditions (the “Agreement”) constitute a contract between Funderbeam Markets OÜ (“Funderbeam”, “we” and “us”) and you (“you”, “Investor” or as the case may be “Lead Investor”).

When submitting an Investor application on our Platform you accept the terms and conditions of this Agreement, and the Fee Schedule. You also accept the Marketplace Rules which regulate the trading on the marketplace operated by Funderbeam (“Marketplace”). The Agreement, the Fee Schedule and the Marketplace Rules are jointly referred to as the “Platform Agreements”. In case of any discrepancies between the Fee Schedule and the Marketplace Rules, and this Agreement the provisions of the the Fee Schedule and the Marketplace Rules shall prevail, respectively.

All the services are provided and most of the communication between you and us or other investors will take place via our Platform.

While using Funderbeam services under this Agreement you must be at least 18 years old (or the age of contractual capacity) and you confirm that you are eligible to do so and not restricted legally, based on your residency, geographic location, or other eligibility criteria.

If you should have any questions regarding this Agreement, you are welcome to contact Funderbeam by e-mail at [markets@funderbeam.com](mailto:markets@funderbeam.com)

## 2. RELATIONSHIPS

**Investor.** By submitting an Investor application, you confirm that you have read and understood the risks set out in the Risk Disclosure Statement and you agree to bear the consequences.

In order to start investing through the Platform or trading on the Marketplace, you will be presented with a set of questions to allow us to assess as to whether you have the necessary experience and knowledge to understand the risks involved.

**Lead Investor.** In order to act as a Lead Investor, you are expected to submit a respective application on our Platform after being approved as an Investor. By acquiring a Lead Investor status, you confirm that you possess relevant professional background, knowledge and experience, and high ethical standards for selecting, making, and maintaining investment in an investee company.

Among other things, a Lead Investor will be the main contact person with respect to other Investors in specific investment and will be representing other investors, including signing relevant agreements unless set out otherwise for specific investment.

When acting as a Lead Investor, you will be required to disclose certain information about yourself on our Platform.

**Our discretion.** Funderbeam has a sole discretion to refuse to enter into a specific relationship and does not have any duty to explain its decision.

**Third parties.** A Lead Investor and also the fundraising company ("Company") have the right to appoint a third party authorised to act on behalf of a Lead Investor or a Company. For the avoidance of doubt, Funderbeam shall not be responsible for the acts and omissions of that third party.

### 3. CLASSIFICATION

Funderbeam will treat you as a retail client in the meaning of all the services we provide you, unless we have informed you otherwise. When treated as a retail client, you may always request to be treated as a professional client by submitting respective application to us. We will decide whether to change your classification based on the information you have provided and will notify you about our decision.

In case we have classified you as a professional client, you are obliged to inform us of any changes that may affect your treatment as a professional client. We will hold the right to change your classification to retail client if we become aware of information about you that has impact on your current classification. Also, you may request to be treated as a retail client, if you are unable to properly assess or manage the risks involved, by submitting respective application to us.

For the avoidance of doubt, depending on your classification, it will be our sole discretion to decide which services we provide you.

## 4. SERVICES PROVIDED VIA PLATFORM

Our services are provided for entire duration of the Agreement, making available for ("Services"):

- a fundraising Company to raise funds and digitalize the investments through the Platform,
- Investors to make investments into a Company through the Platform,
- a fundraising Company to digitalise the investments ("Tokens"),
- a Company to admit the Tokens to trading on the Marketplace,
- Investors to trade with the Tokens admitted to trading on the Marketplace.

The Services are provided in English only.

Any use of our Services contrary to our mission and purpose is strictly prohibited and is considered as being in violation of this Agreement.

All our Services are sold as-is without any guarantee. There will be no re-funds unless otherwise indicated in separate contract you have signed with us.

**Making investments.** By receiving an Investor status, you will be given an access to the Platform in order to find full information about Companies that are seeking capital through the Platform, and we refer to this information as the "campaign". The information provided to the Investors by a Company or a Lead Investor through our Platform has been reviewed by us in order to ensure that the information is fair, clear and not misleading. Even when we have approved the campaign, this does not mean that we are recommending you, to make an investment nor we believe that the business of a Company is likely to be successful. Having that in mind, we do not accept any liability for the information provided to you by a Company through our Platform.

The campaign will be divided into two separate phases:

a) Indications phase – Investors will be able to assess the initial campaign information detailing the investment opportunity and indicate whether or not they are interested in making an investment, and if so, what amount. Such indication would not be binding on any party. This phase allows a Company and/or a Lead Investor to determine if there is enough interest to proceed with the campaign or whether to amend the terms and conditions

to reflect the feedback received from the potential investors.

b) Proposals phase – a Company, and/or a Lead investor will select potential investors to make a specific investment proposal. A Company or a Lead investor will be able to select which types of Investors, and in which jurisdictions, it will or can approach (considering any regulatory restrictions in the relevant jurisdictions). For this stage, final, complete, and sufficient information will be disclosed on the investment opportunity and/or the terms and conditions of the investments, which will enable the potential Investors to form their own investment decision. This proposal is binding on a Company or a Lead investor, and the acceptance of it shall be binding on Investors.

The Platform enables using the following structures for Companies to raise funds:

**I. Loan structure:** For making the Investment, Investors grant a loan to an investment vehicle (“SPV”), which is using the loan to acquire the share(s) of a Company, to grant a convertible or non-convertible loan to a Company or by making the investment otherwise as specified in the Syndicate Loan Agreement. After the loan has been transferred from the Investor’s Wallet to the SPV the Tokens shall be issued to the respective Investors.

**II. Nominee structure:** an investment in a Company is made via an investment vehicle (“Nominee”) that is allowed to invest simultaneously in different Companies. For making the investment, the Investors instruct us to transfer their investment contribution to the Nominee and instruct it to acquire and hold the share(s) of a Company specified in the Nominee Agreement in Nominee’s own name and on account of the Investor. After the shares of a Company has been issued the Tokens shall be issued to the Investors.

**III. Direct investment structure:** an investment in a Company is made without a syndication by transferring the investment directly to the respective Company. After such transfer, the Tokens shall be issued to Investors.

For participating in an investment an Investor shall agree to the relevant investment agreement (“Investment Agreement”) (e.g. Syndicate Loan Agreement or Nominee Agreement) as agreed separately.

**Access to the Marketplace.** After receiving an Investor status, you will be given access to the Marketplace. However, you can start trading in Tokens

after you have answered some questions regarding your knowledge and experience related to financial instruments and services.

When Tokens have been admitted to trading on a Marketplace, the rules of the Marketplace will apply additionally to this Agreement. When accepting this Agreement, you also accept the Marketplace Rules.

You may initiate a Token purchase or sale transaction by: logging in your account, completing the verification process, choosing to buy or sell the Tokens, having the funds available in your Wallet, or being ready for the transfer, entering the requisite information and the amount of Tokens to be transferred.

When initiating orders with Tokens you are directly buying from or selling to another Investor. Funderbeam is not a counterparty in those trades.

When you initiate a Token purchase or sale order such information will be provided to the Marketplace by indicating the relevant instrument information, quantity and purchase price.

After the order is matched, Funderbeam will then arrange registration of the transfer of Tokens and funds in accordance with your instructions and will communicate with the Marketplace and the blockchain network, when applicable.

When acquiring Tokens, you agree to accept the respective Investment Agreement.

We may request that you have sufficient funds available in your Wallet to pay the purchase price prior to posting a buy order or accepting a sell order. If the prior availability of funds was not required and you don't have the funds available in your Wallet, you will be requested to transfer the purchase price to your Wallet. Payment instructions will be made available through our Platform.

If you do not hold respective Tokens prior to your purchase, other Investors in the syndicate or company have the right to step in and purchase the Tokens in your stead (priority right). If no other Investor uses their priority right, if relevant, the agreed transaction will proceed.

If an Investor who has accepted your indication, or whose purchase indication you accepted, does not hold respective Tokens prior to the intended transaction, other Investor in the syndicate have the right to step in and purchase the Tokens themselves (priority right). When the purchasing counter-

party becomes clear, the agreed transaction will proceed.

Because of the legal, technical and other restrictions we may impose limits on the number of Tokens that you may buy, sell, or trade in a given day, and that you may hold in your Wallet. We also may restrict the information you may communicate, or the quantity of other Investors that you may address your transaction to. We reserve the right to change posted limits as we deem necessary or appropriate from time to time.

We have the right to refuse to accept your order, if:

- I. you have outstanding obligations in connection with previous transactions;
- II. the Wallet has been blocked or seized;
- III. we suspect that the instruction has been given for the purpose of market abuse;
- IV. on other grounds specified in this Agreement, the Marketplace Rules, or in applicable rules and regulations.

When handling orders on your behalf in relation to the Tokens, Funderbeam will take all reasonable steps to achieve the best result. We have in place internal procedures which are designed to obtain the best results when handling your orders, subject to and taking into account the service provided by Funderbeam.

We promptly and accurately record orders handled on your behalf. We transmit your orders for matching on a 'first come, first served' basis.

Further, we will inform you of any material difficulty relevant to the proper carrying out of your order(s) promptly upon becoming aware of the difficulty.

In order to mitigate the risks for conflicts of interest, we ensure that we do not receive any remuneration, discount or non-monetary benefit for routing your orders to a particular Marketplace.

**Wallet and transfers.** When you are accepted as an Investor, we shall create you a specific hosted wallet ("Wallet"). In the Wallet, we (i) record the Tokens belonging to you, (ii) reflect the funds you have transferred to a designated client money account with a credit institution for the purposes of making investments and transactions in Tokens, or which have been credit to the account as proceeds from your investment, and (iii) record your transactions in Tokens and with the funds.

In order to make investments, or purchase Tokens, through the Platform, you shall either transfer funds that you have committed to invest, or to pay as a purchase price, to a client money account, or have the funds available otherwise on the Wallet, e.g. received as proceeds from your earlier investments.

The client money account is opened with a credit institution licensed under the EU laws and regulations. The account is held in our name, but the funds are held for your benefit and are fully segregated from our own assets.

The funds you have transferred to the client money account, or have received as proceeds from your investments, we reflect accordingly in your Wallet. In making transfers we act solely based on your instruction(s). By accepting an investment proposal or posting or matching a sell or buy order you instruct us to block sufficient amount assets in your Wallet, and to transfer, or to receive funds and Tokens, respectively. In case of multiple simultaneous transactions your Wallet is debited according to the time of occurrence of the transactions.

You can use the funds in your Wallet only to pay for the investments on the Platform or the Marketplace, or to transfer them back to your own cash account. No interest shall be payable on the money in your Wallet for the period it is held there.

You may have the right to cancel your investment for a specified period of time as described in the Investment Terms. If you exercise a right to cancel under respective Investment Terms, we will refund the amount of your investment to your Wallet. However, if you do not exercise your right to cancel the investment within such specified period, your investment is irrevocably committed and not cancellable.

The payment options and methods are disclosed on our Website.

Payment services related to our Services are provided by professional payment service providers, such as credit institutions licensed under the EU laws and regulations. These institutions are providing their services in accordance with their terms and conditions.

Please be noted that for each payment transaction the network provider may charge their customary transaction or handling fee, if any.

If a charge is declined or reversed by the network, the Investor agrees to pay Funderbeam a service fee and to reimburse Funderbeam for all reasonable

costs of collection.

If the payment method fails or Investor's account is past due, Funderbeam may collect owed fees through other collection mechanisms.

By making a payment, you allow Funderbeam to store the payment information.

If you have not paid the amount due by the payment due date, you may be invoiced a late payment penalty in the amount that corresponds to 0.5% per day of the balance past due or the highest amount permitted by applicable law, whichever is lower. The penalty will be applied on the day after the payment due date.

If your account becomes past due, in addition to owing late payment penalties, the account may be suspended for non-payment, and you may be responsible for collection costs and related legal costs.

**Tax.** You must comply with any and all applicable tax laws, including the reporting and payment of any taxes arising in connection with your use of our Services, your loans or returns from the investment. The reporting and payment of any such applicable taxes are your responsibility.

**No advice.** Funderbeam, its subsidiaries and affiliated companies do not provide investment, legal, financial, tax or other advice and any of the actions of Funderbeam shall in any case not be construed as giving such advice.

It is your responsibility to seek independent advice regarding the Services (including applicable tax obligations). The operations and acts of Funderbeam (including, without limitation, its permission to publish any information regarding any Company or syndicate, its activities in creation of Tokens or transfer of Tokens to other Investor etc.) may not be considered as an advice or recommendation to invest in any instrument. You are required to personally assess any and all risks associated with any transaction you plan to enter into. You are recommended to seek professional advice to determine such risks.

Furthermore, our approval of a campaign, as described above, does not mean that we are recommending that you make an investment in a Company, that we believe the business is likely to be successful or that we take any responsibility or will in any way be liable to you if a Company is not successful. The investment decision with respect to any investment through our



Platform is yours.

## 5. YOUR CONFIRMATIONS AND UNDERTAKINGS

Where you act as an Investor, you acknowledge and agree that:

- I. investing in Companies and trading in Tokens is inherently risky, as the value of an investment can swiftly increase as well as decrease, and your capital is at risk. The value of the investment is not guaranteed in any way. For example, investing in early stage companies exposes the investor to significant risk of losing all or part of the invested funds;
- II. you have reviewed carefully all information available on the Platform regarding the investment opportunities, and you have understood and accepted all possible risks;
- III. you have sufficient knowledge and experience in investing in early-stage companies and other high- risk investments;
- IV. there might be a need to immediately consult an expert specializing in advising on the investment to early stage companies, if you have any doubts or questions about investing via the Platform or regarding the terms of using the Platform;
- V. when using the Loan structure or Nominee structure you do not invest directly in a Company as an investee company but in a company that invests in the investee company (SPV or Nominee), and therefore, you may not be able to exercise shareholder or investor rights available only to direct holders of such instruments;
- VI. a Lead Investor plays an important role in arranging the investment to a Company via the Platform, and you have adequately assessed a Lead Investor's background, investment experience and skills;
- VII. we do not endorse any Investor's content and are not responsible or liable for any such content, even though it may be unlawful, harassing, libelous, privacy-invading, abusive, threatening, harmful, vulgar, obscene, or otherwise objectionable, or may infringe upon the intellectual property or other rights of another;
- VIII. we do not have an obligation to pre-screen any content you may

post on the Platform. However, we have a right (but not the obligation) in our sole discretion to refuse, edit, move, or remove any content that is submitted on or through the Platform.

With respect to the information submitted by you, you undertake to i) update the sign-up and profile information and to keep it current and accurate; ii) post through the Platform only content that you own, have created, or which you have clear permission to publish; iii) be responsible for the content you upload, post, email, transmit, or otherwise make available on or through the Platform.

Where you act as a Lead Investor, you undertake invest in each Company for which you lead the syndicate. Furthermore, you will disclose all fees that you will earn for being a Lead Investor in an investment in the initial campaign information provided to the Investors.

When acting as the Investor you agree that some content regarding you or the syndicate may be made available to the public through our Website.

## **6. FEES**

You shall pay, and we shall charge you fees for our Services based on the Investment Agreement and/or Fee Schedule available on our Website.

## **7. FINANCIAL CRIME AND FRAUD PREVENTIONS**

You acknowledge that Funderbeam has certain responsibilities to apply both local and international measures for the prevention of money laundering, terrorist financing as well as the measures of the application of international sanctions. Within applying these measures, Funderbeam may regularly ask additional questions and documents, including about the persons related to you, your economic activities, the origin of the funds and the ownership structure etc. If you fail to provide required information, we may establish temporary or permanent restrictions on the use of the Services. In executing this Agreement, you agree that Funderbeam may perform these checks whenever necessary and the Company shall hold Funderbeam harmless from any losses, damages or costs arising from these checks.

## 8. TERM AND TERMINATION

Duration of the Agreement. This Agreement is for an unlimited duration.

Termination of the Investor status. You may terminate this Agreement, for any or no reason, at any time. Your option to terminate this Agreement is available through your account profile under subscription rights.

We may unilaterally and immediately terminate your Investor status for any reason if, inter alia:

- I. you are in a breach of any of the obligations under the Platform Agreements or the Terms of Use or the Privacy Policy;
- II. national or international transaction restrictions have been established against you or a person related to you;
- III. any governmental authority demands the termination of this Agreement;
- IV. you or a person connected with you are suspected of money laundering or terrorist financing or predicate offence of money laundering, and you do not eliminate our suspicions about the possible connection to these actual or alleged offences.

**Suspension.** We also hold the right to suspend your Investor status for any reason until the grounds for the suspension are eliminated.

**Consequences of the termination or suspension.** In case of the termination or suspension of your Investor status, we limit your access to the Services in a way that we only accept outgoing payments and/or selling instructions from your Wallet, except where prohibited by law. However, in case of the termination, if you have not submitted respective instruction(s) within reasonable time or such time as specified by us, we reserve the right to sell the Tokens on the Marketplace at the best possible price, which according to us can be reasonably obtained at that moment. The funds from the sale of the Tokens shall be delivered to your cash account known to us or, as the case may be, held by us until you send us information about your valid cash account. You also agree, that we can settle any financial claims we have against you under this Agreement from the funds received from the sale of the Tokens (including the bank fees related to cash transactions).

## 9. AMENDMENTS

Funderbeam may amend the Agreement at any time with one month's notice, by posting a revised version of the Agreement on the Website and notifying you about it via Platform or e-mail. You may cancel the Agreement within the notice period. If you continue to use the Services after the end of the notice period, you will be deemed to have accepted the revised version of the Agreement.

## 10. LIABILITY

You and we shall fulfil our obligations under the Platform Agreements with due care and in good faith. We shall be liable to each other for any wrongful violation of an obligation.

Our liability is limited to any loss or damage you may suffer related to the Services we provide you, to the extent that such loss or damage arises directly from our breach of the Platform Agreements or was the direct result of willful default or fraud by us. We shall not be liable to you for any indirect, consequential, special or punitive loss, damage, cost or expense, unforeseeable losses or damages, loss of profit, loss of business, loss of reputation, depletion of goodwill or loss, damage or corruption of data. Our liability to you for any loss or damage arising from our breach in connection with your investment in a particular Company shall be limited to no more than the amount you invested in particular Company through our Platform or through the Marketplace.

We shall not be in breach of this Agreement if there is, and shall not be liable or have responsibility of any kind for any loss or damage incurred by you as a result of, any total or partial failure, interruption or delay in performance of our duties and obligations occasioned by fire, act of government, state, governmental or supranational body or regulatory authority or war, civil commotion, terrorism, failure of any computer dealing system, interruptions of power supplies, labor disputes of whatever nature or any other reason (whether or not similar in kind to any of the above) beyond our reasonable control.

You agree to indemnify us and hold us harmless for all damages, losses and costs (including, but not limited to, reasonable attorneys' fees and costs) related to all third-party claims, charges, and investigations, caused by

- I. your failure to comply with the Platform Agreements, including, without limitation, your submission of content that violates third-party rights or applicable laws,
- II. any information you submit to Funderbeam, or
- III. any activity in which you engage on or through Funderbeam.

## 11. NOTICES

Any notice, request or other communication to be given or made between you and Funderbeam shall be made electronically via the Website or by sending an e-mail to [markets@funderbeam.com](mailto:markets@funderbeam.com). Should a notice or communication be made or delivered in a different manner, it shall be made or delivered at the address set out in the Website. All legal notices (including legal disputes) must be sent by postal mail to: Funderbeam Markets OÜ, Rotermanni 12, 10111, Tallinn, Estonia.

Any electronic communication will be considered to be received within 24 hours after the time it is posted to the Website or sent by the e-mail. Any messages sent by postal mail will be considered to be received 7 business days after it was sent.

All documents to be furnished or communications to be given or made shall be in the English language.

## 12. MISCELLANEOUS

The Platform Agreements constitute the whole agreement between you and us regarding the rights and obligations of using the Services and supersede all previous agreements between us relating to its subject matter. You and we acknowledge that, in entering into this Agreement, you have not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

You may not assign or delegate any rights or obligations under this Agreement without the written consent of Funderbeam.

It is very important, and it is your responsibility, to store your account pass-

words safely and accessible only by you. It is your obligation to keep your account and Wallet secure and must not share access with anyone else. We may introduce multi-step verification process for the purposes of mitigating the risk of unauthorised access, and you consent to receiving messages from us for that purpose.

Funderbeam may freely assign or delegate all rights and obligations under this Agreement, fully or partially without a notice to you if it does not compromise the performance under this Agreement. The provisions of the preceding sentence are without prejudice to the right of Funderbeam to assign claims to, or to require the collection of a claim by a debt collection office or any other person providing such service.

You understand and accept that performance of the Services by Funderbeam begin as soon as this Agreement is concluded. Given the nature of the Services, and the value of investments being subject to fluctuation due to variable factors, you acknowledge and confirm that the statutory withdrawal rights under the consumer protection (distance selling) rules will be unavailable to you.

### **13. APPLICABLE LAW AND DISPUTE RESOLUTION**

This Agreement is subject to the legislation and jurisdiction of Estonia. It is assumed that all transactions via the Platform are made, and Services are provided, in Estonia. If you are a consumer, you may also resort to the mandatory provisions of the law in force in the state of your residence.

If any provision of this Agreement is held to be invalid, void due to contradicting law or for any reason unenforceable, such provisions shall be struck out and shall not affect the validity and enforceability of the remaining provisions.

Best efforts shall be used to resolve any dispute, controversy or claim arising out of or relating to this Agreement, including breach, termination or invalidity, in amicable negotiations. In case the dispute cannot be solved and the you are a legal entity or a private person operating in its economic or professional activities, or a person who after commencing the use of the Platform has settled in a foreign state or whose place of business, residence or location at the time of filing an action is unknown, the competent institution for settling the dispute shall be Harju County Court.