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## GENERAL TERMS AND CONDITIONS FOR CORPORATE CUSTOMERS

### PAVE COMMUTE APP

#### 1. Basic provisions

##### 1.1. The

Carployee GmbH  
FN 487221b  
Peter-Behrens-Platz 10, 4020 Linz  
( "**Carployee**".)

operates the Pave Commute App (the "**App**"), which is intended to support private users ("**Users**") in choosing their means of transport or their journey to work, university or other institutions. By means of the App, carpools can be formed as well as journeys by bicycle/public transport or footpaths can be optimized, points for mobility behavior can be collected and redeemed for advantages of various kinds ("**benefits**"; e.g. vouchers, promotional items) and links with employers can be formed. For employers, universities, leisure facilities or other companies ("**customers**"), Carployee offers the possibility to reward users for their mobility behavior via the app.

1.2. Carployee provides all services to its customers (together with Carployee: the "**Parties**") on the basis of these General Terms and Conditions ("**GTC**"), which are available at any time at [pavecommute.app/business-terms-eu](https://pavecommute.app/business-terms-eu), in each case in the version valid at the time of the conclusion of the contract.

1.3. These GTC are exclusively addressed to entrepreneurs.

1.4. General terms and conditions of customers that provide for regulations deviating from these GTC or other contractual agreements between Carployee and a customer shall only apply if Carployee has expressly submitted to them in writing.

1.5. Carployee reserves the right to change these GTC at any time and without giving reasons. Changes to the fees or the scope of services are only possible with the express consent of the customer. If the amendments to the GTC are also to apply to existing contractual relationships, the amended GTC must be announced at least 30 days before they come into effect on Carployee's website at [pavecommute.app/business-terms-eu](https://pavecommute.app/business-terms-eu) and by sending the text of the GTC to the e-mail address last notified by the customer. If the customer does not object to the changes within 30 days of receipt of the aforementioned announcement in writing by e-mail to [support@pavecommute.app](mailto:support@pavecommute.app), the changes shall be deemed accepted. In the event of a timely objection by a customer, the contractual relationship between this customer and Carployee shall continue in accordance with the GTC in the version prior to the announced change. If the continued operation of the app on the basis of the previous version of the GTC is technically no longer possible or no longer appears economically reasonable for Carployee for other reasons, Carployee may terminate the contract extraordinarily in the event of an objection by the customer.

#### 2. Contract conclusion

2.1. The Customer shall receive a written offer (the "**Offer**") from Carployee for the type, scope and costs of the provision of the App or provision of other services ("**Other Services**"; together with

the provision of the App "Contractual Services"). Carployee's offers or any cost estimates are non-binding and subject to change unless they are expressly designated as binding.

- 2.2. In the case of non-binding offers, the contractual relationship between the parties (the "**Contract**") shall only come into existence upon written order confirmation by Carployee or, in the absence of such order confirmation, upon commencement of the performance of the contractual services described in the offer (e.g. setting up of corresponding user accounts for the app). In the case of binding offers, the contract shall be concluded upon written acceptance of the offer by the Customer within the offer period specified in the offer.
- 2.3. No contract is concluded between Carployee and Users on the basis of these GTC. Likewise, no contract is concluded between the natural persons who exercise the rights of the Customer within the scope of the App and who enter the App via the Customer's account for this purpose ("Account Administrators") and Carployee. The Customer undertakes to ensure compliance by its Account Administrator(s) with all of the Customer's obligations resulting from the contractual relationship and these GTC.

#### Online purchase

- 2.4. When purchasing contractual services via Carployee's online store, the Customer submits a binding offer to conclude a contract for the respective contractual services to Carployee by clicking on the button "Buy with obligation to pay", to which the Customer remains bound for one week. A confirmation of receipt of the order follows immediately after sending the order by e-mail. Such automatic confirmation of receipt merely documents that the Customer's booking has been received by Carployee and does not constitute an acceptance of the Customer's offer. The contract for the provision of the contractual services is only concluded as soon as the customer has received a written order confirmation of the booking from Carployee by e-mail within the one-week period.
- 2.5. By clicking the checkbox "I have read and accepted the GTC" during the ordering process, the customer confirms that he has read and understood the GTC and expressly accepts these GTC.

### **3. Subject of the contract**

- 3.1. The subject matter of the contract is the legal, organizational, commercial and technical conditions for the provision and operation of the app and the provision of other services. The basic functional description of the app and the associated dashboard for customers, as well as their technical requirements for use, are set forth in Annex ./1 to these GTC ("Functional Description and Requirements for Use"). The other services include in particular implementation and training services, insofar as these are agreed in the contract.
- 3.2. Prior to conclusion of the contract, the customer shall disclose the number of users (employees) at the agreed locations for which a link to the customer (as employer) is to be possible in the app. The number of users (employees) will be announced again by the customer for each billing period.
- 3.3. The Customer expressly understands and acknowledges that Carployee, within the scope of the Benefits feature according to item 2 as well as item 3 of the functional description and conditions of use, exclusively provides the technical and organizational framework for the incentivization of mobility behavior of individual Users by Customers, by providing a points system for rewarding mobility behavior, displaying Benefits in the App and transmitting the information relevant for the activation and redemption of Benefits between User and Customer. The redemption of points for benefits does not establish a contractual relationship between Carployee and the User, from which the User would have any claims whatsoever against Carployee with regard to the benefits offered. The provision of benefits by the customer is exclusively in the relationship between the user and the customer.

- 3.4. The Customer expressly understands and acknowledges that the conclusion of the contract as well as these GTC between the Customer and Carployee does not establish any claim of the Customer against Carployee to the provision of a link to individual Users (see item 3 of the functional description and usage requirements). Linking takes place exclusively subject to manual or automatic linking by the respective User and presupposes the existence of a contractual relationship regarding the use of the App between Carployee and the User. Based on the contract concluded with the Customer and these GTC, Carployee is not obligated to grant access to the App to employees of the Customer as Users.
- 3.5. Customer expressly understands and acknowledges that the individual App Features are granted solely subject to the limitations and conditions set forth in the Feature Description and Terms of Use.
- 3.6. If written or audiovisual reports, recommendations, protocols and the like are provided within the scope of the App, in particular within the scope of the dashboard provided to the Customer within the scope of the App, these shall not constitute expert opinions - unless expressly agreed otherwise in writing. Consulting services in legal and tax matters (including, in particular, labor law issues) are not promised or provided by Carployee under any circumstances.
- 3.7. Carployee has freedom of design in the provision of the contractual services within the agreed framework, unless otherwise agreed in writing. Carployee is furthermore entitled to modify agreed contractual services to an extent reasonable for the Customer.
- 3.8. Carployee shall be entitled to engage vicarious agents with appropriate qualifications, for whose conduct Carployee shall be liable to the Customer as for its own.

#### **4. Service provision and duties to cooperate**

- 4.1. Carployee offers customers the option to download and install the app on a mobile device via the Apple App Store and the Google Play Store ("**App Store**"). In any case, necessary hardware as well as corresponding operating systems for the use of the App are not provided by Carployee.
- 4.2. The minimum technical requirements for the hardware and software needed to use the app can be seen in the respective App Store terms and conditions. Carployee assumes no responsibility for the app being compatible with the hardware and software used by the customer.
- 4.3. Use of the app requires successful installation on the customer's mobile device and Internet access. Furthermore, a corresponding registration by the respective customer is mandatory for use.
- 4.4. Unless more specific provisions are made within the scope of these GTC, the permissible use of the app is governed by the terms and regulations of the app store used.
- 4.5. In order to provide the service, Carployee requires certain information, data and documents (e.g. company, contact details), which may vary depending on the scope of the app use (e.g. additional shift schedule data when using the optional shift schedule feature). These shall be provided by the Customer in a timely and complete manner upon request by Carployee, whereby the parties shall always comply with the applicable data protection regulations with regard to personal data. The Customer shall inform Carployee of any circumstances relevant to the performance of the contract. Additional expenses due to incorrect, incomplete or omitted information shall be borne by the Customer; this may be charged to the Customer additionally.
- 4.6. It is the responsibility of the customer to check the accuracy of the information provided for the provision of the contractual services and to check the documents provided for any third-party

rights. Carployee shall not be obliged to check in this respect. If a claim is made against Carployee due to such an infringement, the customer shall indemnify and hold Carployee harmless.

- 4.7. The Customer grants Carployee the right, free of charge, non-exclusive and for a limited period of time, to use all content submitted by the Customer for the creation of the order to the extent necessary for the fulfillment of the order. Within the scope of the shift schedule connection and the CSV upload (see items 4 and 5 of the *functional description and conditions of use*), the customer is obligated to coordinate data protection aspects with the users in advance or to inform them accordingly about this data processing. If the Customer transmits User data to Carployee, Carployee assumes that the Customer is authorized to do so.

## **5. Copyrights of Carployee**

- 5.1. The Customer acquires the non-exclusive right, limited in time for the duration of the Agreement, to use the App for internal and or purposes within the Customer's organization (the "**License**").
- 5.2. The Customer shall use the App - unless expressly stated otherwise below - for the purposes set forth in these GTC or in the Agreement only.
- 5.3. The App, its contents, its underlying software, as well as other content provided by Carployee (such as, in particular, offers, reports, analyses, drafts, or other data carriers) are protected by copyright and may not be used or edited beyond the right of use granted in the contract without Carployee's prior written consent. The Customer agrees not to decompile the App, not to reverse engineer it, not to attempt to obtain the source code of the software, not to edit or modify the App, or to create derivative works from the App.
- 5.4. Furthermore, the customer is not entitled to reproduce any user documentation of the app or parts thereof or to hand it over to unauthorized persons.
- 5.5. The customer expressly does not acquire any rights of use whatsoever to the object code and/or source code of the app.
- 5.6. The acquisition of the rights of use pursuant to clause 5.1 requires in any case the full payment of the fee invoiced by Carployee for the related order.
- 5.7. Under no circumstances shall any unauthorized reproduction or distribution of the documents give rise to any liability on the part of Carployee - in particular, for example, for the correctness of the content of the documents - vis-à-vis third parties.
- 5.8. The Customer's breach of the provisions of this clause 5. shall entitle Carployee to immediately terminate the contract prematurely for cause and to assert other legal claims, in particular for injunctive relief and damages.

## **6. Fair Use**

- 6.1. The customer is obliged to keep the access data to the app secret. The customer is responsible for all activities that originate from his user account.
- 6.2. Carployee may make the App interactive. Customers acknowledge and agree that the app may only be used to the best of their knowledge and belief and that only truthful information may be provided and that the statutory provisions and these GTC must be observed. Carployee is not obliged to check the accuracy of the content of the contributions.

- 6.3. The customer is obliged to notify Carployee immediately as soon as unauthorized use of the customer's account is suspected. Inquiries will be answered by Carployee within a reasonable time. In any case, customers are not entitled to life support. The customer shall assist Carployee in diagnosing and rectifying an error by providing the required information and documentation.
- 6.4. Insofar as the customer offers benefits for mobility behavior to users via the app, the customer shall ensure that the benefits are offered and provided in accordance with legal regulations and these GTC. Carployee is not obligated to check the correctness of the content or legal admissibility of the benefits offered, but reserves the right to refuse to display benefits in the app for justified reasons.
- 6.5. In case of doubt, the rules of points 7 and 8 take precedence over this point 6.

## **7. Responsibility and liability**

- 7.1. The compilation of content of the app by Carployee is a pure service activity. Therefore, no success is owed with regard to the goals sought through the use of the app. Carployee assumes no liability for the accuracy, timeliness and completeness of the content. Likewise, not for any consequential damages. The customer is therefore solely responsible for critically examining content and assessing it on his own responsibility.
  - a.
- 7.2. Carployee is not obligated to verify the existence or non-existence of an employment relationship between the User and the Customer within the scope of the functions of linking to the Customer (as employer), the shift schedule connection *and* the invitation function according to items 3, 4 and 5 of the *Functional Description and Conditions of Use*. The provision of the shift schedule connection and the invitation function to the User by Carployee shall only take place in accordance with and on behalf of the Customer. The Customer shall be solely responsible for verifying the admissibility of the use of the App under employment law as well as for compliance with any employment law requirements in connection with the use of the App in relation to its employees.
- 7.3. Carployee shall not be liable for any damages incurred by a User as a result of the behavior of a Customer offering Benefits within the App. Carployee exclusively provides the technical and organizational framework for the incentivization of mobility behavior of individual Users by Customers, by providing a points system to reward mobility behavior, displaying Benefits in the App and transmitting the information relevant for the activation and redemption of Benefits between User and Customer. The Customer shall fully indemnify and hold Carployee harmless from and against claims of any kind (e.g. claims for non-performance, warranty) arising in connection with the Customer's redemption of Benefits in the App.
- 7.4. Insofar as Carployee is liable for damage, liability shall be limited to intent and gross negligence. Any further liability of Carployee, in particular for slight negligence (except in relation to personal injury), atypical damage, loss of profit, damage due to defects, indirect and consequential damage, damage to third parties, etc. is excluded. Furthermore, all liability exclusions of the E-Commerce Act (BGBI I 152/2001 as amended) shall apply.
- 7.5. Claims for damages by the customer expire six months after knowledge of the damage and the damaging party, but no later than two years after Carployee's conduct giving rise to liability.
- 7.6. The Customer undertakes to ensure compliance with all of the Customer's obligations resulting from the contractual relationship as well as these GTC by its account administrator(s) and to ensure that they are complied with. Each Customer shall be liable to Carployee for any corresponding misconduct of the Account Administrator. The customer shall also fully indemnify and hold Carployee harmless in relation to any claims by users resulting from a breach of the customer's obligations towards Carployee.
  - b.

## **8. Warranty**

- 8.1. According to the current state of technology, there is no procedure that can guarantee the freedom from errors of software. Consequently, Carployee cannot guarantee that the App or the underlying software is completely error-free.
- 8.2. Carployee's contractual services are created by experienced experts according to the state of knowledge. Carployee reserves the right to make changes to the content, provided that they do not fundamentally change the nature of the respective contractual services, as well as to replace individual contractual services, unless specifically agreed otherwise. Such changes shall therefore not result in any defectiveness of the contractual service.
- 8.3. The Customer shall report any errors occurring during the use of the App to Carployee. An error exists if the App does not perform the functions specified in Annex .I/1 or in the contract, delivers incorrect results, or otherwise does not behave in a functional manner, so that the use of the App is impossible or significantly restricted. Carployee shall locate, analyze and correct errors reported by the Customer or detected by Carployee in the course of the operation of the Software within a reasonable period of time.
- 8.4. Carployee is not responsible for the correctness of content if it has been provided or approved by the customer. If a defect is exclusively due to incorrect information and incorrect operation by the customer, the customer shall have no warranty claims.

## **9. Terms of payment**

- 9.1. The fee to be paid by the customer (including usage fees for the app) results from the prices agreed in the contract. Unless expressly stated otherwise, all prices are exclusive of statutory value-added tax. Billing shall take place in advance for the billing periods agreed in the contract (e.g. monthly or annually).
- 9.2. In the absence of a written agreement to the contrary, any fee owed shall be due for payment within 14 days of receipt of the invoice and without deduction. In the case of online contract conclusion and payment by credit card, the charge shall be made on the invoice date.
- 9.3. Carployee reserves the right, after confirmation of the order, to start providing the contractual services only after receipt of the first payment.
- 9.4. The Customer is not entitled to set off counterclaims against claims of Carployee unless such counterclaims have been determined by a court or acknowledged by Carployee in writing.
- 9.5. If Carployee expands the range of services or offers new services at different conditions for new customers, existing customers have no right to also use the app with the expanded range of services or at the new conditions.

## **10. Default of payment by the customer**

- 10.2. Notwithstanding any statutory consequences of default (e.g. interest on arrears), Carployee shall be entitled, in the event of default of payment by the customer, to declare due all contractual services and partial contractual services already rendered to the customer. Furthermore, Carployee is no longer obliged to provide further contractual services until the outstanding amount has been settled.

## **11. Contract duration and termination**

- 11.1. The contract is concluded for an indefinite period of time and can be terminated by Carployee and the customer by giving notice.

- 11.2. For a period of six months from the start of the contract term, the customer may terminate the contract at any time ("**Trial Period**"). The termination shall take effect upon expiry of the Trial Period.
- 11.3. Otherwise, the contract can be terminated in writing at the end of each year in the case of annual billing, subject to a three-month notice period. In addition, the contract may be terminated by either party for good cause at any time without notice.

## **12. Secrecy and data protection**

- 12.1. Carployee undertakes - also beyond the end of the contract - to treat all data and information disclosed to it in connection with an order as confidential. Excluded from this are those cases in which there is a legal or official obligation to provide information. Also excluded are data and information transferred by the customer to the app for display to users (e.g. information regarding benefit offers).
- 12.2. The customer is responsible under data protection law when inviting employees, exporting user data, viewing work routes and using the shift plan function. The customer undertakes to comply with the statutory provisions of data protection, in particular the General Data Protection Regulation ('GDPR'). Carployee is the customer's processor within the meaning of Art 4 No. 8 GDPR to the extent specified. For this purpose, the parties agree on the processor agreement in Annex ./2. The customer, as the controller, is responsible for ensuring a corresponding legal basis for data processing in accordance with Art 6 GDPR (if applicable in conjunction with Art 9, 10 GDPR).

## **13. Mention of the customer as a reference**

- 13.1. The Customer grants Carployee the right to use the Customer's name together with a description of the contractual services covered by the contractual relationship in publications for illustration and advertising purposes in both print and electronic media, if necessary also adding literal quotations and using the Customer's logo, and to name the Customer as a reference customer within the scope of commercial activities.
- 13.2. The consent to be named as a reference customer can be revoked at any time. The revocation must be made in writing. Should it not be possible to cancel any publications that have already been made for technical or practical reasons (e.g. publication in a print medium that has already taken place) after receipt of the declaration of revocation, no claims by the customer against Carployee can be derived from this.

## **14. Choice of law, place of performance, place of jurisdiction**

- 14.1. All disputes between Carployee and its customers shall be governed exclusively by Austrian law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the conflict-of-law rules of private international law.
- 14.2. For all disputes between Carployee and its customers, the parties agree on the exclusive jurisdiction of the court having subject-matter jurisdiction for Vienna.
- 14.3. Unless otherwise agreed in writing, the place of performance for contractual services by Carployee shall be its registered office.

## **15. Final provisions**

- 15.1. Each party shall bear its own taxes, duties or fees arising from the contractual relationship.

- 15.2. Amendments, supplements and ancillary agreements to these GTC must be made in writing to be effective. This also applies to the agreement to deviate from this formal requirement. In case of contradictions between these GTC and deviating written agreements between the parties, the provisions of the deviating agreements shall prevail.
- 15.3. Should individual provisions of these GTC be or become invalid, this shall not affect the remaining content of the GTC. The invalid provision shall be replaced by a valid provision that is legally valid and comes as close as possible to the economic intent of the parties.
- 15.4. In the absence of any provision to the contrary in these GTC, the provisions and rights arising from these GTC may not be passed on or assigned to third parties without the written consent of the other contracting party.
- 15.5. A "**third party**" in the sense of these GTC is any natural or legal person different from the Parties in the legal sense, even if legal and/or economic relations should exist with such a person.



## **Description Scope of functions App (for enterprise customers)**

The Pave Commute app ("**App**") is used for planning daily routes of users ("**Users**") to their employer, university or other locations. For employers, universities, leisure facilities or other companies ("**Customers**"), Carployee offers the possibility to reward Users for their mobility behavior via the App as described below.

A necessary prerequisite for app use is that the customer downloads the app from the Google Play Store or Apple App Store ("**App Store**") to his mobile device and creates an account via the app. In addition, the customer requires an Internet connection.

### **1. Administrator Dashboard**

The dashboard enables the configuration and operation of certain app features, whereby the functionalities of the administrator dashboard can be adapted and customized in detail by Carployee on an ongoing basis. The administrator dashboard can be accessed via web browser after creating the customer account (in the app).

### **2. Incentivization (general)**

Users are rewarded for mobility journeys in the form of points. The points can be redeemed by users via the app for benefits of various kinds ("**Benefits**"; e.g. vouchers, promotional items) provided by Carployee itself or by customers. The number of points to be credited for a specific mobility behavior as well as the available minimum criteria for the redeemability of points can be determined by Carployee at its own discretion and changed at any time.

The customer has the option via the administrator dashboard to offer benefits via the app, which users can exchange for collected points. The selection of the type of benefits provided, the minimum criteria for their activation and the redemption conditions is generally the responsibility of the customer. However, Carployee reserves the right to refuse the display of benefits via the app at any time for justified reasons (e.g. no display of illegal or offensive goods or services via the app).

In case of activation and redemption of a benefit of the customer by a user, Carployee shall provide the customer with the information of the user (e.g. name, address for physical deliveries, data on mobility behavior) necessary for the assessment of the existence of the minimum criteria and redemption conditions as well as for the provision of the benefit according to the information provided by the customer. The further processing of the redemption and provision of the benefit takes place exclusively in the relationship between the customer and the respective user; Carployee merely provides the technical and organizational framework for the incentivization of mobility behavior of individual users by customers by providing a points system for rewarding mobility behavior, displaying benefits in the app and transmitting the information relevant for the activation and redemption of benefits between user and customer. Points exchanged for customer benefits cannot be exchanged by the customer against Carployee for money or monetary benefits or used in any other way.

The ranking of the benefits in the display within the app is based on relevance for the respective user, whereby this is determined by the onboarding results, the user's previous mobility behavior, and the user's location (e.g., greater relevance of benefits that can be unlocked by cycling for users who primarily use a bicycle for their daily commute). The customer has no claim to a specific ranking result with regard to the benefits offered by him.

### **3. Linking with and incentivizing employees**

The customer can link to their employees in the app to reward mobility behavior and view attributable savings. For this purpose, Carployee adds the customer to the list of available employers, which is displayed to all users of the app. Users can select their employer from this list for linking. In this case, Carployee transmits the data relevant for assessing the linking authorization (name, email address) to

the customer for manual approval of the linking ("**manual linking**"). As an alternative to manual linking, the customer may disclose company-owned e-mail domains to Carpayee. In this case, all users who are registered in the app with an email address containing the disclosed email domain can link to the customer without a separate release by the customer ("**automatic linking**").

The customer does not acquire a claim to permanent linking of a user with the customer account. The link between the User and the Customer may be terminated by the User at any time. The Customer may terminate existing links with Users via the administrator dashboard at any time (e.g. due to termination of the employment relationship with a User).

Aggregated statistics on the mobility behavior of linked users can be visualized in the administrator dashboard. The inclusion of a user's mobility data in the aggregated statistics takes place exclusively on behalf of the respective user and in the case of a link.

In addition, the customer can provide a special incentive for users linked to the customer via the app by providing benefits that can only be activated and redeemed by users linked to the customer. For the rest, reference can be made to what was said under point 2 on general incentivization. The options for special incentives for linked users can be further developed by Carpayee on an ongoing basis.

#### **4. Shift plan connection**

In order to additionally support and promote the mobility behavior of employees linked to customers with daily (or weekly) changing or irregular daily working hours, the customer can activate the shift schedule connection. If the Customer wishes to make the shift schedule connection available to individual Users linked to the Customer, the Customer shall transmit the shift schedules to Carpayee in electronic form (as a CSV file). The shift schedules must contain information on the first and last name, date of birth and working hours of the employees in order to be able to perform the shift schedule connection. Carpayee undertakes to use shift schedules transmitted by the Customer exclusively for shift schedule linking on behalf of and in accordance with the Customer's instructions.

After the shift plans have been transmitted by the Customer, all Users linked to the Customer shall have the opportunity to connect to the shift plan connection that concerns them. The Customer shall have no claim against Carpayee for actual use of the Shift Plan Connection Feature by Linked Users to the extent that they do not connect to the Shift Plan Connection.

#### **5. Employee invitation**

The customer can inform workers about the app and invite them to a link by adding contact details (name, email address and optionally home address and work address) of workers via the administrator dashboard. The invitation is then sent automatically via email by Carpayee on behalf of the customer, with the content and style of the invitation predefined by Carpayee.

## **Data Processing Agreement**

pursuant to Art 28 of the General Data Protection Regulation ('GDPR')

### **PREAMBLE**

This agreement regulates the processing of personal data ('data') by Carployee as processor on behalf of the controller (data processing').

This Processor Agreement is an integral part of the General Terms and Conditions agreed between the parties and is therefore the subject matter of the contract. It does not require separate acceptance.

This agreement does not regulate the economic and legal conditions or provide a precise technical or professional description of the services to be provided by the processor.

Having said this, the parties agree as follows:

### **1. PURPOSE AND SCOPE OF APPLICATION**

- a) This Processor Agreement ('Clauses') ensures compliance with Art 28 (3) GDPR and (4) leg cit.
- b) These Clauses apply to the processing of personal data in accordance with Annex I.
- c) Annexes I to III are an integral part of the Clauses.
- d) These clauses apply without prejudice to the obligations to which the controller is subject under the GDPR.

### **2. INTERPRETATION AND PRECEDENCE**

- e) If the terms defined in the GDPR are used in these clauses, these terms shall have the same meaning as in this Regulation.
- f) These clauses shall be interpreted in the light of the provisions of the GDPR.
- g) These clauses may not be interpreted in a way that is contrary to the rights and obligations provided for in the GDPR or that restricts the fundamental rights or freedoms of the data subjects.
- h) In the event of any conflict between these clauses and the provisions of the main contract, the General Terms and Conditions or any related agreement concluded between the parties, these clauses shall prevail. Clause 4.4 is excluded from this.

### **3. OBLIGATIONS OF THE PARTIES**

#### **3.1. Description of the processing**

The details of the processing operations, in particular the categories of personal data and the purposes for which the personal data are processed on behalf of the controller, are listed in Annex I.

### **3.2. Instructions**

- a) The processor shall process personal data only on documented instructions from the controller, unless it is obliged to do so under Union law or the law of a Member State to which it is subject. In such a case, the processor shall inform the controller of these legal requirements prior to processing, unless the law in question prohibits this due to an important public interest. The controller may issue further instructions for the entire duration of the processing of personal data. These instructions must always be documented.
- b) If legal provisions require the Processor to process data in a manner other than that provided for in this Agreement, the Processor shall inform the Controller of these legal requirements at least 3 days before the start of processing and shall also notify the Controller of any resulting changes. The controller has the right to object in writing to the commencement of processing. An exception to this notification obligation shall only apply if the relevant legal provision prohibits such notification due to an important public interest.
- c) The processor shall inform the controller immediately if it believes that instructions issued by the controller violate the GDPR or applicable data protection regulations of the Union or the Member States.

### **3.3. Purpose limitation**

The processor shall process the personal data only for the specific purposes set out in Annex I, unless it receives further instructions from the controller.

### **3.4. Duration of the processing of personal data**

The data shall only be processed by the processor for the duration specified in Annex I.

### **3.5. Security of the processing**

- a) The Processor shall take at least the technical and organisational measures listed in Annex II to ensure the security of the personal data. This shall include protecting the data against a breach of security leading to the destruction, loss, alteration, unauthorised disclosure of, or access to, the data, whether accidental or unlawful ('personal data breach'). When assessing the appropriate level of protection, the parties shall take due account of the state of the art, the implementation costs, the nature, scope, circumstances and purposes of the processing and the risks involved for the data subjects.
- b) The Processor shall only grant its personnel access to the personal data subject to processing to the extent strictly necessary for the performance, management and monitoring of the Contract.
- c) The Processor shall ensure that the persons authorised to process the personal data received have committed themselves to confidentiality or are subject to an appropriate legal obligation of confidentiality ('confidentiality obligation').

### **3.6. Documentation and compliance with the clauses**

- a) The Processor shall respond promptly and appropriately to requests from the Controller regarding the processing of data under these Clauses.
- b) The Processor shall also provide the Controller with all information necessary to demonstrate compliance with the obligations set out in these Clauses and arising directly from the GDPR. At the request of the Controller, the Processor shall also authorise and contribute to an audit of the processing activities covered by these Clauses at appropriate intervals or where there are indications of non-compliance. In

deciding whether to review or audit, the Controller may take into account relevant certifications held by the Processor. The controller shall reimburse the processor for the costs incurred by the audit.

### **3.7. Use of sub-processors**

- a) The Processor shall have the Controller's general authorisation to engage sub-processors. This applies in any case to those listed in Annex III. The Processor shall expressly inform the Controller in writing at least 14 days in advance of any intended changes to this list by adding or replacing sub-processors and shall thus give the Controller sufficient time to object to these changes before engaging the sub-processor(s) concerned.
- b) Where the Processor engages a Sub-Processor to carry out certain Processing Activities (on behalf of the Controller), such engagement shall be by way of a contract which imposes on the Sub-Processor substantially the same data protection obligations as those applicable to the Processor under these Clauses. The Processor shall ensure that the Sub-Processor fulfils the obligations to which the Processor is subject under these Clauses and the GDPR.

### **3.8. International data transfers**

- a) Any transfer of data by the Processor to a third country or international organisation shall be made solely on the basis of documented instructions from the Controller or to comply with a specific provision under Union law or the law of a Member State to which the Processor is subject and shall comply with Chapter V of the GDPR.
- b) The Controller agrees that in cases where the Processor engages a Sub-Processor pursuant to Clause 3.8 for the performance of certain processing activities (on behalf of the Controller) and such processing activities involve a transfer of personal data within the meaning of Chapter V of the GDPR, the Processor and the Sub-Processor Agreement may ensure compliance with Chapter V of the GDPR by using standard contractual clauses adopted by the Commission pursuant to Art 46 (2) of the GDPR, provided that the conditions for the application of such standard contractual clauses are met.

### **3.9. Support of the controller**

- a) The processor shall immediately inform the controller of
  - 1. any request it has received from the data subject. It shall not respond to the request itself unless it has been authorised to do so by the controller.
  - 2. Requests from courts or authorities relating to personal data that the processor processes on behalf of the controller. Before transferring data processed on behalf of the controller to authorities, courts or other third parties, the processor shall coordinate the further procedure with the controller.
- b) Taking into account the nature of the processing, the processor shall support the controller in the fulfilment of the controller's obligation to respond to requests from data subjects to exercise their rights, insofar as this cannot be done by the controller itself.
- c) In fulfilling its obligations under clause 3.10 lit a) and lit b), the Processor shall follow the Controller's instructions.
- d) Apart from the Processor's obligation to support the Controller pursuant to clause 3.10 b), the Processor shall also support the Controller in complying with the following obligations, taking into account the nature of the data processing and the information available to it:

1. Duty to examine and carry out an assessment of the impact of the intended processing operations on the protection of personal data ('data protection impact assessment');
2. Obligation to consult the competent supervisory authority(ies) prior to processing if a data protection impact assessment indicates that the processing would result in a high risk, unless the controller takes measures to mitigate the risk;
3. Obligation to ensure that the personal data is accurate and up to date by the processor informing the controller immediately if it discovers that the personal data it is processing is inaccurate or out of date;
4. Obligations pursuant to Art 32 GDPR.

### **3.10. Notification of personal data breaches**

In the event of a personal data breach, the processor shall cooperate with and assist the controller to enable the controller to fulfil its obligations under Art. 33 and Art. 34 GDPR, taking into account the nature of the processing and the information available to the processor.

#### *3.10.1. Breach of the protection of data processed by the controller*

In the event of a personal data breach in connection with the data processed by the controller, the processor shall assist the controller as follows

- a) In notifying the personal data breach to the competent supervisory authority(ies) without undue delay after the controller becomes aware of the personal data breach, where relevant (unless the personal data breach is unlikely to result in a risk to the personal rights and freedoms of natural persons);
- b) When obtaining the following information to be included in the controller's notification pursuant to Article 33(3) GDPR, which must include at least the following information
  1. the nature of the personal data, where possible, specifying the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
  2. the likely consequences of the personal data breach;
  3. the measures taken or proposed to be taken by the controller to address the personal data breach and, where appropriate, measures to mitigate its possible adverse effects.
- c) In complying with the obligation under Art. 34 GDPR to notify the data subject without undue delay of a personal data breach where the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons.

#### *3.10.2. Breach of the protection of data processed by the processor*

In the event of a personal data breach in connection with the data processed by the processor, the processor shall notify the controller without undue delay after becoming aware of the breach. This notification must contain at least the following information

- a) A description of the nature of the breach (if possible, specifying the categories and approximate number of data subjects affected and the approximate number of data records affected);
- b) Contact details of a contact point where further information about the personal data breach can be obtained;
- c) The likely consequences and the measures taken or proposed to be taken to address the personal data breach, including measures to mitigate its possible adverse effects.

If and to the extent that not all of this information can be provided at the same time, the initial notification shall contain the information available at that time and further information shall be provided as soon as it becomes available, without undue delay thereafter.

#### **4. FINAL PROVISIONS**

##### **4.1. Breaches of the clauses and termination of the contract**

- a) If the Processor fails to fulfil its obligations under these clauses, the Controller may - without prejudice to the provisions of the GDPR - instruct the Processor to suspend the processing of personal data until it complies with these clauses or the contract is terminated. The Processor shall inform the Controller immediately if it is unable to comply with these clauses for any reason whatsoever.
- b) After termination of the contract, the processor shall, at the choice of the controller, erase all personal data processed on behalf of the controller and certify to the controller that this has been done, or return all personal data to the controller within 8 weeks and erase existing copies, unless there is an obligation to retain the personal data under Union or Member State law. Until the deletion or return of the data, the processor shall continue to ensure compliance with these clauses.

##### **4.2. Amendment of the processor agreement**

The amendment of the processor agreement is governed by the provisions in the General Terms and Conditions.

##### **4.3. Applicable law, place of jurisdiction, severability clause**

- a) Unless a different choice of law is made in the main contract, this order processing contract shall be governed by Austrian law to the exclusion of conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.
- b) If no other choice of law has been made in the main contract, the place of jurisdiction shall be the locally and materially competent court at the registered office of the processor.
- c) Unless otherwise agreed in the main contract, invalid or unenforceable clauses shall not affect the validity of the remaining clauses. The parties undertake to replace the invalid provision with a new, valid provision that comes as close as possible to the meaning and purpose of the invalid provision. The same applies to loopholes in this agreement.

## **AUFTRAGSVERARBEITERVEREINBARUNG**

gemäß Art 28 Datenschutz-Grundverordnung ("DSGVO")

**ANHANG I DESCRIPTION OF THE PROCESSING**

Categories of affected persons	Employees
Categories of personal data	Name, e-mail address, date of birth, date of registration, date of a journey to work, postcode of home address, work address, number of registered sustainable journeys, means of transport, number of registered car journeys, total number of coins collected, total number of coins exchanged, CO2 saved and kilometres travelled for each means of transport, passengers, shift schedules including start and end of working hours.
Sensitive data processed and restrictions or safeguards applied	None.
Type of processing	<ul style="list-style-type: none"><li>– Automated processing through provision of the Carployee Dashboard</li><li>– Survey order processing</li></ul>
Processing purpose(s)	<ul style="list-style-type: none"><li>– Sending invitations to employees</li><li>– Export of user data</li><li>– Access to work routes</li><li>– Shift work schedule function</li></ul>
Storage location	Frankfurt, Germany
Duration of processing	For the duration of the main contract or until cancellation by the controller.



## **ANHANG II**

### **TECHNICAL AND ORGANISATIONAL MEASURES, INCLUDING MEASURES TO ENSURE THE SECURITY OF DATA**

1. The parties agree on the following technical and organisational security measures to ensure an appropriate level of protection, taking into account the nature, scope, context and purpose of the processing as well as the risks to the rights and freedoms of natural persons Examples of possible measures:

#### **Confidentiality**

- Access controls to office premises using ID cards
- Encryption of end devices
- Minimal assignment of rights
- Training courses
- Securing end devices against access by third parties (display locks, password protection)
- Strict password guidelines (SSO whenever possible)
- Checking employee devices through endpoint verification (Google)
- Mandatory use of an antivirus programme for employees
- 2-factor authentication whenever possible
- Services are checked for security before introduction (ISO 27001)

#### **Integrity**

- Backups
- Access tracking
- Training courses
- Automated deletion procedures
- Independent modification of data by the user in the app or via simple support requests
- Access controls via SSH for server infrastructure
- Regular risk analyses with prioritisation
- Debriefing of incidents incl. development of strategies for prevention

#### **Availability and resilience**

- Redundant infrastructure
- Scalable infrastructure
- Monitoring and warning systems in the event of failure or malfunction
- Regular updates and update strategy for software
- Implementation of penetration tests
- Emergency drills for restoring data using backups
- On-call service for emergencies (24/7)

### **Pseudonymisation and encryption**

- Regular updates and update strategy for software
- Use of encryption methods for sensitive data
- Encrypted transmission of data exclusively via defined services
- Carrying out penetration tests

### **Evaluation measures**

- Ongoing evaluation of existing infrastructure and services
- Internal evaluation of assigned rights and authorisations
- Updating and reviewing the TOMs

### ANHANG III LIST OF SUB-PROCESSORS

1. The controller has authorized or acknowledged the use of the following sub-processors at the time this data processing agreement enters into force:

Name	Address	Processing purpose(s)	Type of processing	Duration of processing	Technical and organizational measures
AWS	Amazon Web Services EMEA SARL 38 Avenue John F. Kennedy, L-1855, Luxembourg	Hosting of Servers, sending E-Mails	Storage, processing and transmission of data	For the duration of the contractual relationship and in accordance with statutory retention periods	<a href="https://aws.amazon.com/de/compliance/gdpr-center/">https://aws.amazon.com/de/compliance/gdpr-center/</a>
Atlas MongoDB	Building 2 Number One Ballsbridge, Shelbourne Rd, Ballsbridge, Dublin 4, D04 Y3X9, Ireland	Storage and management of databases	Storage and processing of data in databases	For the duration of the contractual relationship and in accordance with statutory retention periods	<a href="https://www.mongodb.com/legal/customer-service-agreement/technical-and-organizational-security-measures">https://www.mongodb.com/legal/customer-service-agreement/technical-and-organizational-security-measures</a>

Sentry	Functional Software, Inc. d/b/a Sentry 45 Fremont Street, 8th Floor, San Francisco, CA 94105	Error and performance monitoring of applications	Analysis, storage and processing of error and usage data	For the duration of the contractual relationship and in accordance with statutory retention periods	<a href="https://sentry.io/trust/privacy/gdpr-best-practices">https://sentry.io/trust/privacy/gdpr-best-practices</a>
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