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AG5			Matrices Employees Skills Organization				   		
Acme Inc			Team A						
			Noah	Sally	Ethan	Sabina	Michael	Logan	
									Achieved Required Gap
Machine	Operate machine A								6 6 0
	Production line set up								5 6 1
	Machine lines know-how								4 6 2
HSE	Safety Champ								5 6 1
	Fire safety								5 6 0

# AG5 | General terms and conditions

These are the general terms and conditions of AG5 B.V., having its registered office at Oostenburgervoorstraat 83A (1018 MP) in Amsterdam, the Netherlands, and registered with the Chamber of Commerce under registration number 34233942 (hereinafter referred to as: "AG5"). AG5 offers a cloud-based software solution that allows customers to streamline their business processes, manage employee skills, and assess and develop staff competencies.

These general terms and conditions govern every agreement made between AG5 and its customers.

## Article 1 | Definitions

In these general terms and conditions, all capitalized terms have the meanings set out in this article, both in their singular and plural forms.

- 1.1 **Account:** the personal accounts for Customer created by AG5, which AG5 provides to Customer to enable use of the purchased Services.
- 1.2 **Agreement:** the entire agreement between AG5 and Customer, which in any case includes, without limitation, AG5's Order Form or offer, these General Terms and Conditions, a service level agreement (if applicable), and the Data Processing Annex entered into between Parties.
- 1.3 **Annex(es):** any attachment to the Order Form, these Terms and Conditions or other part of the Agreement.
- 1.4 **Confidential Information:** any information that has been marked as being confidential or that the receiving Party should reasonably be able to understand is of a confidential nature.
- 1.5 **Customer:** the natural or legal entity acting professionally with which AG5 concludes an Agreement concerning the provision of Services.
- 1.6 **Data:** any data stored by Customer with the Services or otherwise made available to AG5 by Customer in the Agreement context.
- 1.7 **Data Processing Annex:** This appendix to these General Terms and Conditions establishes rights and obligations regarding the processing of personal data.
- 1.8 **General Terms and Conditions:** these are general terms and conditions to which the Data Processing Annex is inseparable. The general terms and conditions are an inseparable part of the Agreement.
- 1.9 **Implementation and Integration:** the integration, modifications, and adjustments, as well as any installation and configuration (if required) to fully use the Software.
- 1.10 **Intellectual Property Rights:** all intellectual property rights and related rights, including but not limited to copyright, (sui generis) database rights, rights to domain names, trade name rights, trademark rights, design rights, neighboring rights, patent rights as well as rights to know-how.
- 1.11 **Materials:** documents, designs, reports, software, data files, formats, models, analyses, data, concepts and prototypes, working drawings, illustrations, prototypes, models, molds, designs, design sketches, films, and or other materials or (electronic) files provided or developed by or on behalf of AG5 in the course of the provision of Services.

- 1.12 **Order Form:** a written offer from AG5, including the price and a description of the Services to be provided to the Customer, which is an inseparable part of the Agreement.
- 1.13 **Party or Parties:** AG5 and Customer collectively or individually.
- 1.14 **Price Plan:** AG5's price list specifies the going rates and costs associated with Services provided by AG5 in the Order Form, as updated and amended by AG5 from time to time. References to the "Price Plan," without further specification of version or current state, signify the most recent price list provided by AG5 at the moment the Agreement was finalized, subject to potential amendments as outlined in article 19. Mentions of the "current Price Plan" or "then-current Price Plan" are to be understood to refer to the most recent price list as maintained by AG5. All prices on the price list displayed through the Website are subject to programming and typographical errors.
- 1.15 **Results:** A result refers to a qualification or certification achieved by an individual on a specific date. For example, Patricia Jones obtained her Emergency Response Officer certification on January 14th; this will be recorded as one result in AG5.
- 1.16 **Services:** services provided by AG5 as specified in the Agreement. These Services may include, without limitation, the provision of Software, Implementation and Integration, Training, and other additional work.
- 1.17 **Software:** AG5's Software-as-a-Service solution made available to Customer under the Agreement enables Customer to manage and optimize the skills of Customer's employees by showing an agreed number of Results.
- 1.18 **Training:** training, workshops, and/or seminars provided by AG5.
- 1.19 **Website:** AG5's website, accessible via <https://www.ag5.com>, or related sub-domains.

## Article 2 | Applicability and formation of the Agreement

- 2.1 These General Terms and Conditions apply to all Agreements entered into between Parties, even if—in the event of a future Order Form, proposal, or offer—these General Terms and Conditions are not made available to the Customer again. The General Terms and conditions will be shared on request.
- 2.2 Agreements are concluded with the Customer accepting the Order Form, proposal, or offer. All AG5's Order Forms, proposals, and offers are free of obligation and are valid for thirty (30) days after the date the offer was created. AG5 is not obliged to accept an indication of acceptance after the expiry of this period, but if AG5 does so, the Order Form, proposal, or offer will be deemed accepted.
- 2.3 AG5's Order Form, proposal, or offer – in particular the specifications, scope/volume(s), and (custom) work required for Customer's expected use of the Services – will be based on deliberations between Customer and AG5 as well as an assessment made by AG5 of information provided by (prospective) Customer. Suppose AG5 bases an Order Form, proposal, or offer on data or information from a Customer that proves to be incomplete or otherwise incorrect. In that case, AG5 will be entitled to adjust the Order Form, proposal, offer, or the Agreement already entered into accordingly or terminate or dissolve the Agreement.
- 2.4 AG5 will not be bound by an acceptance by Customer that deviates from the Order Form, proposal, or offer, including where the deviation only relates to minor aspects as referred to in Section 6:225(2) of the Dutch Civil Code ("Burgerlijk Wetboek").
- 2.5 The Agreement between Parties may comprise several documents. In principle, these documents apply supplementary to each other. In the event of inconsistencies, the below

ranking order will apply, in which a document listed first prevails over a document listed further down:

- a) The Data Processing Annex;
- b) The service level agreement (if applicable);
- c) AG5's Order Form, proposal, or offer;
- d) These General Terms and Conditions;
- e) any additional written agreements signed by Parties;

2.6 The applicability of any terms or other conditions of Customer is expressly excluded.

### **Article 3 | Performance of the Agreement**

- 3.1 After the Customer has accepted the Order Form, proposal, or offer, AG5 will make every effort to provide the Services as soon as possible by the Agreement. Any deadlines stated by AG5 are always indicative and are not considered strict deadlines ("fatale termijnen").
- 3.2 The customer is obliged to do what is reasonably required to ensure that the Services can be provided correctly and on time. In particular, the customer must ensure that all information that AG5 indicates is necessary is provided to AG5 on time and free of charge.
- 3.3 The customer represents and warrants that the information provided to AG5 is correct and complete. AG5 is entitled but not obliged to check these for correctness and completeness. If the information contains inaccuracies or is incomplete, AG5 will be entitled to suspend the Services until the Customer has remedied the shortcomings.
- 3.4 In the performance of the Agreement, AG5 will take account of reasonable requests of Customer or state its reasons for not doing so. If, despite those reasons, Customer insists that the request be complied with, AG5 will (insofar as the request can reasonably be carried out) perform the work at Customer's risk. AG5 has the right to charge a fee for such a request. If a Customer's request cannot be granted, AG5 will state the reasons why.
- 3.5 When using the Services, Customer is obliged to comply with any reasonable advice and instructions provided by AG5.
- 3.6 The customer is responsible for setting up and maintaining a suitable and adequate ICT infrastructure (including hardware and software), considering the intended use of the Services. The customer is required to use the most recent version of the browser (Chrome, Firefox, or Microsoft Edge) used by the Customer for AG5 to provide the Services. The customer understands that these specifications can be adjusted over time due to continually developing technology.
- 3.7 AG5 is entitled to engage third parties to perform the Agreement. Any costs associated with this will only be at the Customer's expense if this has been agreed in advance.

### **Article 4 | Additional work**

- 4.1 In the event of AG5 performing other services at Customer's request, which go beyond the scope of the agreed upon Services (hereinafter: "**Additional Work**"), Customer shall pay for such Services retroactively on a time and materials basis at AG5's then-current rates. However, AG5 will under no circumstances be obliged to comply with such a request and can require that a separate Agreement is entered into for that purpose. Prior approval from Customer is not required for Additional Work as meant herein if AG5 can demonstrate that such Additional

Work is reasonably necessary for the performance of the Agreement or reasonably follows from instructions of Customer.

- 4.2 The customer accepts that the Additional Work can affect the agreed or anticipated completion time of the Services and Parties' mutual responsibilities under the Agreement. AG5 may adjust any agreed timetable or delivery schedule as reasonably necessary. The need for or occurrence of Additional Work during the performance of the Agreement never constitutes a reason for Customer to give notice of termination or to (partially) dissolve the Agreement. To the extent a fixed price is agreed upon for the provision of the Services, AG5 will, upon request, inform the Customer in writing of the financial consequences of the Additional Work.
- 4.3 Upon termination of the Agreement, any Additional Work not yet invoiced will be immediately charged to Customer.

## **Article 5 | Accounts, Implementation, and Integration**

- 5.1 After the conclusion of the Agreement, the Customer will be provided with an Account and asked to provide login information (a unique username and password) to access and use the Software.
- 5.2 AG5 will provide the customer with an Administrator Account, which the Customer can use to create additional Accounts for its employees. Unless otherwise agreed, the Customer is responsible for managing and—where required—withdrawing Accounts. The customer itself must monitor whether the authorizations and access rights granted to employees are still up to date.
- 5.3 The customer is obliged to use any Account made available by AG5 carefully and keep its login information secure and strictly confidential. An Account and the login data are strictly personal. AG5 has the right to assume that all acts performed following authentication of the Account have been performed under the supervision and with the approval of the Customer. The customer is obliged to notify AG5 immediately if it suspects abuse of and/or unauthorized access to its Accounts.
- 5.4 If the Customer suspects or concludes that an Account is being misused, it must immediately take any measures that may be necessary to prevent (further) misuse, such as changing the password. If it is not possible for the Customer to take appropriate measures, the Customer must immediately inform AG5 to enable AG5 to take the necessary measures.
- 5.5 In the course of providing access to the Software and Implementation and Integration following the Agreement, AG5 shall either (i) provide Customer with an Administrator Account, which it can use to create additional Accounts for its employees, or (iii) otherwise ensure Customer receives access to the Software through an Account, for example by integrating Customer's existing authentication mechanisms.
- 5.6 Unless agreed otherwise, AG5 shall provide Customer with the necessary Implementation and Integration required to make full use of the Software as soon as possible after the effective date of the Agreement.
- 5.7 Unless otherwise agreed, AG5 is not obliged to load, convert, or migrate any Data during Implementation and Integration. AG5 may charge the Customer separately against its current rates for support in this context. These charges are specified in the AG5's Order Form, proposal, or offer.
- 5.8 Certain functionalities of the Software are intended to be used with services provided separately to Customer by third parties (hereinafter: "Third-Party Services"). It is the

Customer's responsibility to ensure it has access to Third-Party Services. Client acknowledges that if it does not have the aforementioned access, all or part of the functionalities of the Software may not work as intended. AG5 is under no circumstance responsible or liable for the (non-)availability or functioning of Third-Party Services. Functionalities relating to Third-Party Services provided by AG5 are always subject to change, depending on the availability of providers of such Third-Party Services and/or at the sole discretion of AG5. AG5 will communicate any such changes in writing to the Customer as soon as reasonably possible.

- 5.9 The customer shall owe payment for Implementation and Integration Services performed by AG5 based on one-off fees stated in the Order Form.

## **Article 6 | Notice-and-takedown**

- 6.1 If, in the opinion of AG5, hindrance, damage or other danger arises to the functioning of the computer systems or the network of AG5 or third parties and/or of the services via the Internet, in particular as a result of excessive sending of e-mail or other data, (distributed) denial of service attacks, poorly secured systems or activities of viruses, Trojans and similar software, AG5 is entitled to take all measures that it reasonably deems necessary to avert or prevent this danger. AG5 may recover the reasonably necessary costs in connection with these measures from the Customer.
- 6.2 If AG5 is informed by a third party of unlawful information on its servers or otherwise discovers Customer has stored materials violating these General Terms and Conditions or the applicable law, AG5 is entitled to remove the material or render it inaccessible. AG5 is always authorized to report any criminal acts discovered and will cooperate with duly authorized orders and commands. In addition, AG5 is authorized to provide the name, address, IP address, and other data identifying Customer to a third party who has complained that Customer has violated its rights or the provisions of the Agreement, provided that:
- a) it is sufficiently plausible that the information, on its own, is unlawful and harmful concerning the third party;
  - b) the third party has a genuine interest in obtaining the data;
  - c) it is plausible that, in the specific case, there is no less far-reaching measure to obtain the data and
  - d) examining the interests involved entails that the third party's interest should prevail.
- 6.3 Customer indemnifies AG5 against all legal claims concerning data, information, websites, materials, etc., that have been stored by Customer. In this regard, AG5 is not liable for any damage or loss suffered by Customer caused by any action taken by AG5 following a report from a third party, even if the report turns out to be incorrect and the information does not breach applicable law.
- 6.4 Customer hereby grants AG5 an unlimited license to distribute, store, forward, or copy all materials supplied by Customer on AG5's systems in a manner deemed appropriate by AG5, but solely to the extent this is reasonably required for the purpose of AG5's fulfillment of the Agreement.
- 6.5 AG5 may recover damages resulting from violations of these rules of use from the Customer.
- 6.6 If the Customer violates these rules of use, AG5 is entitled to block access to the Services or certain relevant parts of the Services and to suspend or terminate the Agreement.

## **Article 7 | Availability**

- 7.1 Unless Parties expressly agree otherwise in a service level agreement, the availability of the Software will always be on the basis of best efforts and with due observance of the provisions of this article.
- 7.2 AG5 will endeavor to keep the Software available as much as possible but cannot guarantee uninterrupted availability. AG5 will be entitled to temporarily take the Software out of operation for maintenance activities.
- 7.3 AG5 will endeavor to ensure an annual uptime of the Software of 99,9%.
- 7.4 Planned maintenance time is not included in the availability calculation.
- 7.5 If any obstruction, loss, or other threat arises or may arise for the operation of AG5's computer systems or network or third-party computer systems or networks, for instance, due to

excessive sending, uploading, or downloading of data, network attacks, poorly protected systems, or activities of viruses or other harmful software, AG5 will be entitled to take all measures that it deems reasonably necessary to avert or prevent this threat. AG5 will inform the Customer as soon as possible.

## **Article 8 | Maintenance**

- 8.1 Unless the Parties expressly agree otherwise in a service level agreement, the Software will always be maintained using best efforts and with due observance of the provisions of this article.
- 8.2 AG5 actively maintains the Software. Maintenance that impacts its availability will be announced in advance and carried out when the software's use is averagely low. Emergency maintenance, however, can be carried out at any moment and without prior notice.
- 8.3 AG5 may add or change the software's functionalities from time to time. Customers' suggestions and feedback are welcome, but ultimately, AG5 decides which functionality will be added or changed.
- 8.4 AG5 shall announce changes to the Software at least five (5) days in advance. In AG5's opinion, minor changes that do not meaningfully affect the Software's functionality will be made without prior notice.
- 8.5 The customer is responsible for installing new updates and upgrades made available by AG5. In such cases, AG5 cannot be held responsible for software faults that were fixed in an upgrade or update that wasn't installed by the Customer after being made accessible.

## **Article 9 | Support**

- 9.1 Unless Parties expressly agree otherwise in a Service Level Agreement, the support of the Software will always be on the basis of best efforts and with due observance of the provisions of this article.
- 9.2 Customers can contact the support desk at +31 (0)20 463 0942 or support@ag5.com. AG5 also uses an automatic alert system to help resolve errors quickly and proactively. User error reports route directly to AG5's support staff.
- 9.3 The support staff consists of highly skilled employees, including trainers and programmers who know the AG5 system inside out. Our support staff speak both English and Dutch. AG5 has split the support desk into Support 1 and Support 2 teams.
  - a. Questions about features go to *Support 1*.
  - b. More technical questions are forwarded directly to *Support 2* staff members.
  - c. AG5 utilizes an automatic ticket-handling procedure. Errors must be reported to the AG5 support desk, which internally monitors resolution progress before reporting back to the Customer.
- 9.4 The support desk is available on business days (Monday through Friday) from 8.30 to 17.30 (CET), except on Dutch national holidays and days observed and announced by AG5 in advance. AG5 endeavors to respond to support desk requests as soon as possible.

## **Article 10 | Back-ups**



- 10.1 Unless Parties expressly agree otherwise in a service level agreement, data backups will always be made using best efforts and with due observance of the provisions of this article.
- 10.2 AG5 is not obliged to back up Data unless the Parties explicitly agree that doing so forms part of the Services. If AG5 restores a backup at the Customer's request, the customer shall bear the related costs.

## **Article 11 | Training**

- 11.1 AG5 will provide Training to the best of its ability, exercising reasonable skill and care. AG5 will be entirely free to determine the contents of the Training and the course materials it provides to the Customer. AG5 is entitled to change the location of the Training and will inform the Customer of any changes on time.
- 11.1 The customer agrees to act responsibly and abide by the rules and regulations that govern the location where the Training is provided. The customer must bring their own electronic devices, such as a laptop and mouse, required for the Training.
- 11.3 The fees for the Training are specified in the AG5's Order Form, proposal, or offer.
- 11.4 AG5 is authorized to exclude Customers from participation in the training if AG5 does not receive the outstanding amounts before the start of the training.
- 11.5 Customer acknowledges that the materials that are used and/or presented during the Training constitute the Intellectual Property Rights of AG5 and/or its licensors, and Customer agrees to respect those Intellectual Property Rights. In particular, Customer is not authorized to (i) copy, modify, sublicense, sell, decompile, reverse engineer, or distribute the course materials; (ii) record the Training on video or audio tape or by other means; or (iii) remove any copyright or other notice of AG5 and/or its licensors from the course materials.

## **Article 12 | Intellectual Property Rights**

- 12.1 Unless otherwise agreed in writing, all Intellectual Property Rights and other proprietary rights pertaining to the Software, the Services, and other Materials developed or provided by AG5 under the Agreement will be exclusively vested in AG5 or its licensors.
- 12.2 With due regard to the Customer's interests, AG5 will always be entitled to use the Software, the Services, and the Materials for its own publicity or promotion.
- 12.3 The customer is not permitted to remove or modify any designation of Intellectual Property Rights or to remove any indications of a confidential nature from the Software, the Services, and Materials without prior written permission from AG5 to do so.
- 12.4 AG5 has the right to use third-party software and components, including open-source software, in providing the Services. If AG5 decides to include such in the Software provided to Customer, it will provide Customer with the applicable terms (if any). The customer is responsible for ensuring proper compliance with the relevant third-party licenses when using the Software.

## **Article 13 | License**

- 13.1 In consideration of the fees as specified in the Agreement and if and insofar agreed between Parties in the Agreement, AG5 grants Customer a non-exclusive, non-transferable license for the use of the Software and Materials for the duration of the Agreement for its internal business purposes and in accordance with the number of Results specified in the Agreement ("License Scope"). The license shall, unless agreed otherwise, become effective from the start date stated in AG5's Order Form, proposal, or offer.
- 13.2 The customer is not entitled to receive the source code of the Software and Materials.

- 13.3 Notwithstanding anything stated to the contrary in the Agreement, Customer is expressly not permitted:
- a. to reverse-engineer the source code of the Software or to decompile the Software unless such is allowed pursuant to a mandatory legal provision which may not be lawfully derogated from;
  - b. to make changes to or modify the Software, unless such is allowed pursuant to a mandatory legal provision which may not be lawfully derogated from or with prior written approval of AG5;
  - c. to remove or render illegible indications of AG5 and/or its licensors as the party entitled to the Software or parts thereof or
  - d. access all or any part of the Software and Materials to build a product or service that competes with the Software.
- 13.4 If Customer exceeds or is likely to exceed the License Scope as specified in the Agreement, AG5 may charge additional costs or (after providing a written warning) limit the use of the Software to the permitted capacity.
- 13.5 The fee can be increased or decreased depending on the number of results actually generated. If fewer Results are generated than originally agreed upon, the fee may decrease, while an increase in generated Results may lead to a fee increase. Suppose the Customer during a current subscription term exceeds the maximum number of Results applicable based on the License Scope, then AG5 shall invoice Customer on a pro-rata basis for the remaining period of the Initial Term of the Agreement as stated in article 22. The amount for each next renewed term is based on the number of Results calculated by AG5 on the last day of the previous Initial Term. Consequently, the fees remain the same, or the Customer will be scaled up or down to another based on the Price Plan.
- 13.6 The customer authorizes AG5 to publicly disclose that the Customer is using the Software, Services, and Materials, and AG5 may use the Customer's name and logo in any promotional materials, including but not limited to the Website, case studies, and press releases.
- 13.7 The rights provided under this article are granted to Customer only and shall not be considered granted to any subsidiary or holding company of Customer unless expressly agreed otherwise.

#### **Article 14 | Exit**

- 14.1 In case of termination of the Agreement other than due to a breach of Customer's obligations under the Agreement, it is Customer's sole responsibility to export their Data before termination or expiry of the Agreement. Within 4 weeks of the termination or expiry of the Agreement, AG5 shall delete all Data submitted by the Customer, generated by the Customer using the Software, and in AG5's possession at the time of termination or expiry.
- 14.2 At any time, Customer can freely export data in CSV format from the following AG5 pages: Employees, skills, skill results, skill plannings, skill revocations, skill exemptions, skill requirements, personal requirements, the alert list, self assessment requests, skill result approvals, positions, groupings.

## **Article 15 | Data and Privacy**

- 15.1 All Data remains the property of the Customer. AG5 is granted only a non-exclusive and non-transferable license to use Data for the duration of the Agreement, to the extent necessary to provide the Services.
- 15.2 To the extent that Data contains personal data within the meaning of the General Data Protection Regulation (hereinafter: "GDPR") and such personal data is processed by AG5 under the Agreement (e.g., within the context of the provision of Services), AG5 acts as processor and Customer as controller within the meaning of the GDPR. In this case, the Parties agree that the Data Processing Annex will apply.
- 15.3 AG5 shall not be responsible for any loss, destruction, alteration, or disclosure of Data caused by Customer or any third party (except those third parties sub-contracted by AG5).

## **Article 16 | Confidentiality**

- 16.1 Parties will treat the information they provide to each other before, during, or after the performance of the Agreement as confidential if this information has been marked as confidential or if the receiving Party knows or should reasonably assume that this information was intended to be confidential. Parties also impose this obligation on their employees and the third parties engaged by them to perform the Agreement. These provisions continue to apply after the Agreement ends for any reason whatsoever and for as long as the disclosing Party has the right to invoke the confidential nature of the information.
- 16.2 Each Party will use the same degree of care in protecting the Confidential Information of the disclosing Party as it uses in protecting its own Confidential Information, but in no event less than reasonable care.
- 16.3 This article will not apply to any information which:
  - a. is or becomes generally available to the public other than as a result of a disclosure by the receiving Party in breach of the Agreement;
  - b. was within the receiving Party's possession before its disclosure to it by or on behalf of the disclosing Party;
  - c. becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing party not under obligation to keep such information confidential; or
  - d. is developed independently by the receiving Party.
- 16.4 If a receiving Party becomes legally compelled to disclose any Confidential Information provided pursuant to the Agreement, such receiving Party will provide the disclosing Party with prompt written notice so that such disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the confidentiality provisions of the Agreement. Any Confidential Information provided hereunder will remain the exclusive property of the disclosing Party.
- 16.5 Promptly after the expiration or termination of the Agreement for any reason, each receiving Party will deliver to each disclosing Party all originals and copies of any material in any form containing or representing the Confidential Information in its possession or will destroy the same at the request of the disclosing Party relative to such Confidential Information.

## **Article 17 | Terms of payment**

- 17.1 In exchange for the Services, the Customer will be required to pay the prices stated following the prices stated in the Price Plan stated in AG5's Order Form, proposal, or offer. Unless expressly indicated otherwise, all prices stated by AG5 are in euros and exclusive of value-added tax (VAT) and other governmental levies.
- 17.2 AG5's amendments to the Price Plan outside the scope of this article do not apply to Agreements already in force.
- 17.3 AG5 is entitled to invoice the Services in advance. The customer hereby agrees to AG5 sending electronic invoices. All invoices sent by AG5 are subject to a Thirty (30) day payment term.
- 17.4 If the Customer disagrees with the contents of an invoice, the Customer is entitled to suspend payment of the disputed (though not any other) part of the invoice. AG5 must be informed of this in writing within the payment term if an invoice is disputed. After being informed of an invoice being disputed, AG5 will assess whether or not this is justified as soon as possible. If it proves unjustified, the Customer must pay the amount outstanding within fourteen (14) days.
- 17.5 If – except in the situation described in the preceding paragraph – Customer fails to pay an invoice, or pay it in full, within the payment term, Customer will be in default by operation of law. In such case, AG5 is entitled (i) to charge Customer the statutory interest for commercial transactions on the outstanding amount and (ii) to suspend the provision of all or part of the Services until Customer has paid the outstanding amount in full.
- 17.6 If the Customer continues to fail to pay an invoice following a demand for payment or a notice of default, AG5 will be entitled to refer the claim for collection. Any extrajudicial costs and legal expenses incurred by AG5, including the costs of legal experts, lawyer's fees, bailiff costs, and debt collection agencies, will, in such a case, be completely at the Customer's expense.
- 17.7 AG5 is entitled to increase the prices annually by a maximum of five percent (5%) without causing the Customer to terminate the Agreement.
- 17.8 The customer is not entitled to set off any payment obligations against any claims it has on AG5 for whatever reason.

## **Article 18 | Liability**

- 18.1 AG5's liability for loss and/or damages resulting from a failure in the performance of the Agreement, an unlawful act or otherwise, is limited, per event or series of coherent events, to an amount equal to the total payable amounts (excluding VAT) that Customer has paid under the Agreement until the moment the damage has occurred or, if the Agreement is concluded for a term longer than three (3) months, to an amount equal to the payments that Customer has made in the last three (3) months. In no case shall the total compensation for direct damages amount to more than 50.000 EUR (excluding VAT).
- 18.2 AG5 is only liable for direct loss and/or damage arising from an attributable failure in the performance of the Agreement. Direct loss and/or damage is solely understood to mean any and all loss and/or damage consisting of
  - 18.3 the damage caused directly to tangible objects ("property damage");
  - 18.4 reasonable and demonstrable costs Customer has had to incur in demanding that AG5 properly performs the Agreement unless the defective performance is not attributable to AG5;
  - 18.5 reasonable costs to determine the cause and the extent of the direct loss and/or damage;

- 18.6 reasonable and demonstrable costs incurred by Customer to prevent or limit the direct loss and/or damage, insofar as Customer can demonstrate that such costs have resulted in limitation of the direct loss and/or damage;
- 18.7 reasonable and demonstrable costs for having the Agreement fulfilled by a third party, where AG5, after receiving notice from Customer, fails to ensure proper performance within the reasonable term stipulated in the notice.
- a. Any limitation or exclusion of liability stipulated in this Agreement will not apply in the event that the loss and/or damage is attributable to (i) wilful misconduct or deliberate recklessness of AG5's management, (ii) death or bodily injury, or (iii) any other matter for which it is unlawful to limit or exclude liability.
  - b. Unless performance by AG5 is permanently impossible, AG5 will only be liable due to an attributable failure in the performance of a contract if Customer declares AG5 to be in default in writing without delay and grants AG5 a reasonable term to remedy the breach, and AG5 culpably fails to fulfill its obligations also after this term has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible to give AG5 the opportunity to respond adequately.
  - c. Any right to claim compensation is at all times subject to the condition that Customer notifies AG5 of the loss and/or damage in writing within no more than thirty (30) days of its discovery.

#### **Article 19 | Force majeure**

- 19.1 AG5 will not be obliged to perform the Agreement if performance is prevented as a result of force majeure.
- 19.2 Parties will, in any case, consider the following to be force majeure, without limitation: fire, floods, strikes, power failures, telecommunications infrastructure failures, force majeure on the part of AG5's own suppliers, network attacks, import and export impediments, war and terror. Any liquidity problems on the Customer's part do not qualify as force majeure.
- 19.3 To the extent that AG5 had already fulfilled part of the Agreement by the time the force majeure situation arose or will be able to fulfill part of the Agreement, and such partial fulfillment can be ascribed an independent value, AG5 is entitled to invoice for such fulfillment separately.
- 19.4 In the event of force majeure, AG5 can suspend the performance of the Agreement for as long as the situation continues. If the situation lasts over three (3) months, Parties will be entitled to terminate the Agreement in writing, without any obligation to pay the other Party compensation.

#### **Article 20 | Duration and termination**

- 20.1 The Agreement is entered into for the period stated in the AG5's Order Form, proposal, or offer. ("Initial Term"). If an Initial Term is not specified, the agreement is deemed to have been entered into for an Initial Term of one (1) year.
- 20.2 The Agreement can be terminated by the Customer in writing with effect from the end of a term, with due observance of a period of notice of one (1) month. In the absence of such written termination by the Customer, the Agreement shall be tacitly extended for a period equal to the Initial Term in each instance.

- 20.3 The Agreement can be terminated by AG5 at the start of each new term subject to written notice of at least three (3) months before the new term commences.
- 20.4 The Parties may not terminate the Agreement in the interim, save for those circumstances for which an exception is expressly made in these General Terms and Conditions or other parts of the Agreement.
- 20.5 AG5 will be entitled to suspend the Agreement with immediate effect (in full or in part) or terminate or dissolve the Agreement with immediate effect (in full or in part) if:
- a. The customer fails to comply with its obligations under the Agreement or fails to comply with these in time and does not remedy the failures within a reasonable period after being given notice of default. However, prior notice of default is not required in cases where default arises by operation of law;
  - b. Customer applies for bankruptcy or is declared bankrupt, applies for a moratorium or is granted a moratorium, Customer's company is liquidated, or its business activities are discontinued;
  - c. circumstances arise due to which performance of the Agreement is rendered impossible, or AG5 cannot reasonably be required to maintain it unchanged.
- 20.6 In the case of the Agreement's dissolution, there will be no cancellation obligations regarding the Services that AG5 has already provided.
- 20.7 Following termination or dissolution of the Agreement, any remaining claims of AG5 on Customer will be immediately due and payable, regardless of the reason for such termination.

## **Article 21 | Changes**

- 21.1 AG5 is authorized to modify these General Terms and Conditions and will announce any changes to Customer at least fourteen (14) days in advance. Changes also apply to Agreements already entered into.
- 21.2 If the Customer does not wish to accept a change, the Customer can lodge a written objection within fourteen (14) days after the announcement. If AG5 decides to proceed with the change despite the Customer's objection, the Customer can terminate the Agreement in writing, with effect from and no later than the date on which the change takes effect.
- 21.3 The procedure described above does not apply to changes of minor significance or changes that benefit the Customer. AG5 may implement such changes unilaterally and with immediate effect without this leading to a right for Customer to terminate the Agreement. Customers will be informed of such changes as soon as possible.

## **Article 22 | Miscellaneous**

- 22.1 The Agreement is subject to Dutch law. Any dispute between the Parties regarding the Agreement will be submitted to the competent court in the Netherlands in the district where AG5 has its registered office.
- 22.2 Parties can only transfer the rights and obligations arising from the Agreement to a third party with the written permission of the other Party. AG5 will, however, be authorized to transfer the Agreement, without Customer's prior permission or cooperation, to a parent company, sister company, or subsidiary or to a third party in case of a merger or acquisition. AG5 will inform the Customer as soon as possible, in writing, after such a transfer has taken place.
- 22.3 If any provision in the Agreement proves to be void, voidable, or otherwise invalid, this will not affect the validity of the entire Agreement. In such a case, Parties will replace that provision

with a new provision that will reflect the purpose of the original clause as much as possible under the law.



# Annex 1 | Data Processing Agreement

This Data Processing Agreement is an integral part of the Agreement. AG5 (hereinafter: **“Processor”**) shall process personal data for Customer (hereinafter: **“Controller”**) during the term of the Agreement. The provisions in this Data Processing Annex shall apply to any processing of personal data for Controller by Processor.

## Article 1 | Definitions

- 1.1 In this Data Processing Annex, terms from the GDPR, e.g., “processing”, “personal data”, “data breach”, “controller,” and “processor,” is used in the sense of the GDPR.

## Article 2 | Applicability | personal data

- 2.1 This Data Processing Annex applies to any processing of personal data by Processor on behalf of Controller in the context of the Services provided to Controller by Processor, as laid down in the Agreement entered into by Parties and/or Processor's General Terms & Conditions, insofar as these apply.
- 2.2 Parties agree and confirm that the Controller shall take full responsibility for specifying the purpose for and means by which personal data is to be processed. Processing shall, in principle, be carried out based exclusively on the Controller's written and/or specified instructions. The processor has no say over the purpose of and how personal data is to be processed and shall make no decisions about the use of or retention period for said personal data.
- 2.3 This Data Processing Annex does not apply to any processing of personal data that the Processor itself carries out in the context of the Services provided and for which it itself has determined both purposes and means.
- 2.4 Processing of personal data under the auspices of this Data Processing Annex shall not result in any transfer to Processor of Intellectual Property Rights or other claims to personal data and is in no way intended to infringe the rights of data subjects in any way whatsoever.
- 2.5 Processor shall process personal data under the auspices of this Data Processing Annex as specified in Annex A.

## Article 3 | Processor's Obligations

- 3.1 Processor shall only process personal data on behalf of Controller and only as required as part of the Services provided to Controller by Processor, as well as for any purposes deemed reasonably relevant to providing said Services or agreed to by Parties in writing. Processor shall not process personal data for any purpose other than that specified by Controller.
- 3.2 The Processor shall immediately inform the Controller if it believes an instruction from the Controller conflicts with the GDPR or any other relevant legislation or regulation.

- 3.3 The processor shall ensure that obligations arising from this Data Processing Annex will be fulfilled by those persons under the Processor's authority entrusted to process personal data, including, but not limited to, its employees.
- 3.4 Insofar as it is able, the Processor shall assist the Controller with fulfilling its obligations to:
- a. Respond to requests from data subjects exercising their rights under the GDPR,
  - b. secure its personal data processing operations and report data breaches to the data protection authority and data subjects,
  - c. carry out a data protection impact assessment (hereinafter: **"DPIA"**), if required to do so, and enter into prior consultation with the Data Processing Annex.
- 3.5 Any costs incurred in the course of providing this assistance have not been included in the Processor's agreed prices and fees. Processor is entitled to charge Controller reasonable costs for providing aforementioned assistance. Should such costs be incurred, the Processor shall inform the Controller of such in advance and at the earliest possible opportunity.
- 3.6 If a data subject submits a request to the Processor to exercise his/her legal rights, the Processor shall forward said request to the Controller, who shall deal with the request further and without prejudice to the provisions in Article 3.4. The Processor may inform the data subject accordingly.

#### **Article 4 | Controller's Obligations**

- 4.1 The Controller shall inform the Processor whom it has appointed as its Data Protection Officer (hereinafter: **"DPO"**) and/or representative insofar as one has been appointed. Any changes should be forwarded to the Processor immediately. If the Controller does not inform the Processor about its DPO or representative, the Processor shall assume that the Controller has not appointed such an individual.
- 4.2 The controller guarantees that the content and use of personal data and its processing under the auspices of this Data Processing Annex are lawful and respect all third parties' rights.

#### **Article 5 | Subcontracting**

- 5.1 Processors may subcontract work to third parties under the auspices of this Data Processing Annex. An up-to-date list of subcontractors working on behalf of the Processor for the purpose of Processing Personal Data under this Data Processing Annex is available from the Processor's service manager and/or its website. The controller declares that it has read and understood the list of subcontractors or has had the opportunity to do so and agrees with this list.
- 5.2 Processor shall ensure that its subcontractors commit to Processor in writing to the same or greater extent that Processor has committed itself to Controller in this Data Processing Annex.

#### **Article 6 | Transfer of personal data**

- 6.1 The Processor may process personal data in countries within the European Economic Area (hereinafter: **"EEA"**).

- 6.2 The processor shall inform the Controller if it wishes to process personal data outside the EEA. Processor shall only process data in a country outside the EEA if this country offers equivalent guarantees for the protection of personal data as offered within the EEA.

## **Article 7 | Security**

- 7.1 The processor shall—taking into account the state of the art, implementation costs, and the information made known to the Processor concerning the purpose and risks of processing—take adequate technical and organizational measures concerning processing personal data to prevent its loss or any form of unlawful processing, such as unauthorized access, degradation, alteration, or disclosure.
- 7.2 In any case, the Processor shall have taken the measures as part of the ISO27001 certification and guidelines. The current version of the ISO20071 certification shall always be made available on request.
- 7.3 Processor operates in compliance with standards deemed adequate to satisfy security requirements given the state of the art.
- 7.4 Processor is willing to draft an audit report or have one drafted at Controller's request (and cost) – annually at most or more frequently should sufficient grounds exist to justify doing so – rating the security measures taken in the context of this Data Processing Annex and the standards applied by Processor.

## **Article 8 | Reporting Obligations**

- 8.1 The Controller shall always remain responsible for any statutory requirements to report data breaches to the data protection authority and/or its data subjects.
- 8.2 Processor shall inform Controller immediately about any data breach, and if possible, within forty-eight (48) hours of said data breach being detected, to enable Controller to fulfill this statutory obligation. Reports shall be made using the contact details made known to the Processor and the communications channels commonly used by Parties.
- 8.3 Processor's report shall, at the very least, state that a data breach has occurred, along with details of the following:
- a. The nature of the data breach, stating, where possible, the categories of data subjects affected and an estimate of its duration and scope
  - b. the name and contact details of the Processor's DPO or another contact person from whom additional information is available
  - c. the potential consequences of the data breach
  - d. the measures proposed or taken by the Processor to address the data breach, including measures to mitigate any adverse consequences, where relevant

## **Article 9 | Privacy & Confidentiality**

- 9.1 All personal data that the Processor receives from the Controller and/or collects itself under the auspices of this Data Processing Annex is subject to a duty of confidentiality towards third parties. The Processor shall not use this information for any purpose other than the one for which it was obtained.

- 9.2 This obligation shall not apply if the Controller has given explicit consent to divulge this information to a third party, wherever it may be logically concluded that it is necessary to do so given the nature of the assignment and the implementation of this Data Processing Agreement, or where a legal obligation exists to provide the information to a third party.
- 9.3 If the Processor is legally obliged to provide personal data to a third party, it shall inform the Controller of this unless the legislation prohibits this.

#### **Article 10 | Audits**

- 10.1 Controller has the right to request a copy of the audit report specified in article 7.4. Processor shall provide additional assurances (supplementary to this audit report) wherever Controller deems these reasonably necessary in the context of its obligation for accountability. Parties shall discuss relevant details further. The Processor is entitled to charge the Controller for all costs incurred.
- 10.2 The Controller is entitled to have audits carried out by an independent expert third party, bound by confidentiality, to check compliance with this Data Processing Annex.
- 10.3 This audit will take place no more than once a year and will only take place if the Controller demonstrates a concrete suspicion of misuse of personal data. The audit initiated by the Controller will take place two weeks after prior notification.
- 10.4 The Processor shall cooperate with the audits mentioned in the previous article and make all data and resources (deemed reasonably relevant to the audit) available promptly.
- 10.5 Audit findings shall be made available to the Processor for evaluation. The Processor may implement them at its discretion and in a fashion as it itself sees fit. The Controller shall keep all information about the Processor in this context strictly confidential.
- 10.6 All costs incurred regarding audits are payable by the Controller. The Processor's agreed prices and fees have not included any costs incurred while cooperating with audits. The Processor is entitled to charge the Controller reasonable costs for the aforementioned assistance. Should such costs be incurred, the Processor shall inform the Controller of such in advance and at the earliest possible opportunity.

#### **Article 11 | Liability**

- 11.1 The regulation of liability agreed in the Agreement shall apply to the liability of the Parties for damages resulting from an attributable failure to fulfill its obligations in respect of this Data Processing Annex or the GDPR, from a wrongful act, or otherwise.
- 11.2 Controller indemnifies Processor against damages (including any data protection authority and/or data subject claims and all related costs) should these claims relate to a failure on the Controller's part to fulfill its obligations under this Data Processing Annex or the GDPR.

#### **Article 12 | Contract Term & Termination**

- 12.1 This Data Processing Annex shall take effect once signed by both Parties.
- 12.2 This Data Processing Annex has been entered into for a term laid down in the Agreement between Parties and, in the absence of which, for no longer than the duration of the partnership, i.e., for as long as Controller makes use of the Services provided by Processor for which Processor processes personal data on behalf of Controller.

- 12.3 On termination of this Data Processing Annex for whatever reason and in whichever way, Processor shall offer Controller a reasonable opportunity to make digital copies of all its existing personal data and shall destroy any remaining copies at the earliest opportunity following termination of the Data Processing Annex.

## Annex A | PROCESSING OPERATIONS

**Article 1. Parties expect to process the following personal data:**

- first & last names;
- email address;
- employee number;
- employment start & end date;
- date of birth;
- gender;
- job title/role.

**Article 2. Personal data usage / Processing method(s) & processing purpose/means**

Processing consists of managing personal data stored on the Processor's systems on behalf of the Controller. Personal data is used to identify a particular employee, and the employee is authorized on behalf of the Controller to enter and edit data. The Controller's employee details are stored to allow the Controller to filter its employees by certain criteria, e.g., skills, competencies, qualifications, training courses, certifications, etc. (skills matrices). The system also generates automatic notifications, e.g., alerts notifying an employee that his/her certification is about to lapse.

The processor has access to the data entered by the client to support the controller, as well as system maintenance in general and controller environment maintenance in particular. The Processor's support staff can access and view data with the Controller to troubleshoot and resolve any necessary problems. The Processor does not alter or add any data to the Controller's data environment. The Controller remains responsible for all data entry into the system.

**Article 3. Categories of data subjects:**

- Controller's employees;
- Controller's clients.