

## GENERAL CONDITIONS OF USE FOR THE PLATFORM AGILE PROFILE ®

### 1. Definitions

Each of the terms below shall have the meaning given in its definition, that is:

- **“Certified Contractor”**: Service provider specialised in training, coaching, or consultancy for enterprises and having received certification from AGIL’OA authorising him/her to use and operate the AP Test commercially in the course of his/her business.
- **“Contract”**: the Contract comprises all the Orders, present or future concluded by the Certified Contractor and these General Conditions. In case of contradiction the terms of the Order shall prevail over the General Conditions.
- **“Order”**: Order by the Certified Contractor for a Service from AGIL’OA, via the Platform,
- **Data**: Raw results of the AP Tests, taken by the Users, and formatted by AGIL’OA in the context of the Services
- **“Account”**: personal space, dedicated to the Certified Contractor, and hosted on the Platform, through which the Certified Contractor can make Orders and receive Results
- **“Platform”**: the web site developed by AGIL’OA, and accessible to the Certified Contractors at the address <http://certified.agiloa.com>, through which Certified Contractors can have access to the AP Test
- **“Service”**: operation of processing and returning in the form of a document termed Agile Profile, by AGIL’OA, of the Data supplied by the Certified Contractors
- **“Results”**: document (deliverable) presenting and interpreting Data for Certified Contractors
- **“AP Test”**: Personality test tool, termed Agile Profile®, designed and developed by AGIL’OA, for appraising an individual’s various action stances - innovation, co-operation, anticipation,
- **“Users”**: natural persons, clients of Certified Contractors, or subject to the authority of the Certified Contractors’ clients, and submitted to the AP Test,

### 2. Object

2.1 The purpose of these General Conditions is to define:

- the means and conditions by which the Certified Contractors have access to the Platform, to make Orders for Services from AGIL’OA, for the purposes of providing training services, advice and assistance for Users,
- the conditions under which the Certified Contractors are authorised to use the AP Tests in the course of their business,
- the obligations to which the Certified Contractors are subject for the purposes of conserving their Agile Profile® certification

2.2 These General Conditions can be consulted on the Platform. They must be accepted by the Certified Contractor when he subscribes to the Platform. Failing a special agreement evidenced in writing dispensing in whole or part from these Conditions, any Order made on the Platform by the Certified Contractor shall be deemed to be a full and unreserved acceptance by the Certified Contractor of these General Conditions and renunciation of his/her own conditions. These General Conditions prevail over any other document issued by the Certified Contractor.

### **3. Conditions of performance of the Services**

#### **3.1 Ordering the Services**

To make an Order for Services the Certified Contractor has to connect to his/her Account by using the usernames communicated to him/her by AGIL'OA.

These usernames are personal, non-transferable, and may in no case be communicated to a third party. The access to the Platform requires the Certified Contractor to have access to a telecommunications network. This service is not included in the Services and must be provided by a telecommunications operator under his/her responsibility and at the Certified Contractor's choice. At his/her exclusive expense the Certified Contractor takes personal responsibility for installing, maintaining, and connecting the various elements of the configuration and telecommunications resources necessary for having access to the Platform.

The use of the services accessible on the Platform may be conditional on following a special training course provided by AGIL'OA.

#### **3.2 Delivery of the Results**

Once the Service has been performed the Certified Contractor may have access to the Service's Results on his/her Account.

### **4. Hosting – Availability of the Platform**

4.1 The Platform and the Certified Contractors' Data connected to the Services are hosted on the servers of AGIL'OA or its sub-contractors. AGIL'OA reserves the right at any time to migrate the Platform and the Certified Contractors' Data to other servers to continue to guarantee the best quality of service possible.

4.2 AGIL'OA undertakes to provide all the care and diligence needed to assure the continuity and quality of service in conformity to the uses of the profession and best practices. AGIL'OA shall use its best efforts to maintain access to the Platform from Monday to Friday from 9 a.m. to 6 p.m.

4.3 AGIL'OA reserves the right to suspend access to the Platform for eventual interventions for maintenance or improvement so as to ensure it functions correctly. In this case AGIL'OA shall notify, in so far as possible, the Certified Contractor in advance within a period of 24 hours indicating the nature and duration of the intervention.

4.4 Moreover, owing to the characteristics and limits intrinsic to the Internet network, the Certified Contractor declares he is well aware that AGIL'OA cannot be held liable in particular for difficulties of access to the Platform, eventual saturation of the networks at certain periods, fluctuations in the bandwidth and access provider's contingencies, or the interruption to the Services ordered by an administrative or judicial authority.

### **5. Prices – Terms of payment**

5.1 The price and terms of payment of the Services are defined in the Order.

The latter is made respecting the "Certified Contractor" prices AGIL'OA addresses by e-mail to the Certified Contractors at the beginning of the year.

5.2 Billing is monthly and is based on the number of Orders for Services the Certified Contractor makes on the basis of the Data recorded on the Platform.

5.3 Unless stipulated otherwise in the Estimate, the Certified Contractor undertakes to pay the sums due for the Services on receipt of the invoice, by cheque or bank transfer, net and without discount. In the event of delay to the payment at due date by the Certified Contractor, all sums owing shall become immediately payable as of right pursuant to Article L 441-6 of the Code of Commerce the day following the date for payment appearing on the invoice without any reminder or notice being required. The sums paid after the contractual date due shall systematically bear interest at an annual rate of 12%. Furthermore, pursuant to Articles L.441-3 and L.441-6 of the Code of Commerce, any delay of payment shall entail as of right, in addition to the penalties for delay, the obligation for the Certified Contractor to pay the minimum lump-sum of 40 Euros for recovery costs, it being understood that AGIL'OA reserves the option to claim additional compensation on presentation of receipts if the recovery costs are higher than the lump-sum compensation.

## **6. Specific obligations of the Certified Contractor**

### **6.1 Conditions for exploiting the Results**

As an approved service-provider the Certified Contractor has received special training on using and interpreting the AP Test Results. The Certified Contractor undertakes, in the course of his/her business, and in particular for interpreting the Results, to respect the Agile Profile® methods as referred to in Annex 1.

### **6.2 Certified Contractors' Code of Ethics**

The Certified Contractor undertakes not to make Orders for Services on behalf of non-certified third parties.

It should be remembered that AGIL'OA hosts Users' raw Data for processing as part of the Services. This database is protected pursuant to Articles L.341-1 *et seq.* of the Intellectual Property Code. Consequently, the Certified Contractor undertakes not to extract any element from this database without AGIL'OA's prior agreement. Moreover, he undertakes not to exploit or reuse the Users' raw Data for commercial purposes or in conditions not conforming to Agile Profile® methods.

The Certified Contractor undertakes to notify AGIL'OA of any infringement by another Certified Contractor of the rules for use provided in this article, or of any use of the Results by a third party not certified by AGIL'OA.

### **6.3 Maintenance of the Agile Profile certification**

So as to be able to continue to benefit from the Agile Profile® certification the Certified Contractor undertakes to keep his/her knowledge up to date and respect the developments in the Agile Profile® methods.

For this purpose, he/she undertakes to participate:

- in the Deepening and Sharing Groups (GAP - *Groupes d'Approfondissement et de Partage*) organised by AGIL'OA at least once every second year,
- in one individual or collective supervision session with a member of the AGIL'OA team, at least once a year, or at an inter-enterprises or intra-enterprise seminar organised by AGIL'OA as an observer

He/she also undertakes to draw up an article or case study or an exercise published on the site reserved for AGIL'OA Certified Contractors

The Certified Contractor undertakes to communicate to and inform AGIL'OA, as well as the other Certified Contractors, via a collaborative space host on the Platform, every suggestion to improve the Agile Profile® methods.

The Certified Contractor undertakes to Order at least one Service a year as well as to maintain a minimum level of practice necessary for implementing his/her knowledge.

These conditions are cumulative and the non-respect of one of them may entail the withdrawal of the Agile Profile® certification in the conditions under article 6.4.

#### **6.4 Withdrawal of the Agile Profile® certification**

In case of a breach of one of the obligations under this article AGIL'OA may withdraw certification from the Certified Contractor according to the procedure provided in the article "Term – Termination".

### **7. Special obligations of AGIL'OA**

AGIL'OA undertakes to continue research aimed at improving the reliability and quality of the Agile Profile® methods permanently.

To this end AGIL'OA undertakes to put on line on the Platform every update or improvement concerning the Agile Profile® methodology and to inform the Certified Contractors, whether by e-mail or in its newsletters.

AGIL'OA also undertakes to organise GAPs every year, during which the improvements concerning the Agile Profile® methodology and the Services shall be presented, in addition to individual or collective supervision sessions as indicated in article 6.3.

### **8. Term – Termination- Suspension**

8.1 This Contract is concluded for an indefinite term, subject to maintaining the Certified Contractor's Agile Profile® certification. Accordingly, so long as he keeps the Agile Profile® certification the Certified Contractor shall have access to the Platform.

8.2 At any time the Certified Contractor may ask for his/her Account to be closed and may terminate this Contract by registered delivery with acknowledgement of receipt. The closure of the Account and termination of the Contract shall be effective within a period of eight (8) days following AGIL'OA's reception of the Certified Contractor's request.

8.3 Should the Certified Contractor fail to respect any of his/her obligations under this Contract AGIL'OA reserves the right to suspend in whole or part the Orders in progress and/or access to the Platform. This suspension cannot be deemed a termination of the Contract by AGIL'OA or be any grounds for compensation for the Certified Contractor.

8.4 Should the Certified Contractor fail to respect any of his/her obligations under these General Conditions AGIL'OA shall give him/her notice to observe his/her contractual obligations by registered delivery with acknowledgement of receipt. If, after a period of thirty (30) days from this notice, the Certified Contractor has not made good the said breach AGIL'OA shall be entitled to revoke his/her Agile Profile® certification and terminate this Contract. In this event the Certified Contractor's personal usernames shall be deactivated and he/she shall no longer have access to the Platform.

8.5 In the event of this Contract's termination, whatever the grounds, the Certified Contractor may no longer in any manner assert his/her status, even past, as an Agile Profile® Certified trainer or coach and must immediately cease all communications vindicating this status.

## **9. Support and maintenance services**

Throughout the term of this Contract AGIL'OA shall provide the following support and maintenance services:

### **9.1 Assistance in Using**

AGIL'OA provides personalised assistance in the use of the Platform in the conditions defined below. The Certified Contractor may telephone the support centre on 00 33 4 38 49 56 69, from Monday to Friday, from 9.30 a.m. to 12.30 p.m. and from 2 to 5.30 p.m., or address a mail to the following address: [info@agiloa.com](mailto:info@agiloa.com).

### **9.2 Corrective maintenance**

The Certified Contractor may notify any Abnormality by telephone or e-mail. AGIL'OA guarantees to repair the abnormality as corrective maintenance within *a period of 3 working days*.

The Certified Contractor undertakes to give any detailed information that may identify the problem encountered. After preliminary diagnosis AGIL'OA shall use its best efforts to correct the abnormality as soon as possible after the diagnosis in accordance with the technique's current data and with all the care and diligence necessary in compliance with the best practices in the field.

### **9.3 Upgrade maintenance**

In the context of the Platform's evolution AGIL'OA may make modifications to the Platform providing benefits for the Certified Contractors (functions, performance, ergonomics). The upgrade maintenance shall be scheduled and be the subject of a communication to the Certified Contractor. AGIL'OA shall install the updates and upgrades on the Platform.

## **10. Intellectual property**

### **10.1 Platform**

AGIL'OA has and retains title to the intellectual property rights over the Platform. The access to the Platform granted by AGIL'OA does not entail any transfer of intellectual property or technical knowledge in favour of the Certified Contractor. Consequently, the Certified Contractor undertakes not to harm AGIL'OA intellectual property rights either directly or through a third party with whom he/she may be associated.

### **10.2 Results of the Services**

All the items produced and provided by AGIL'OA in the course of performing a Service, and in particular the Results, which may give rise to intellectual property rights, are the exclusive property of AGIL'OA. AGIL'OA grants the Certified Contractor an exclusive licence to use, reproduce, represent, and market over the Services, and over any medium both in France and abroad. These rights are assigned for the term of this Contract and without additional charge other than the price of the Services.

## **11. Title to the Data and backups**

11.1 The Data are the User's exclusive property. AGIL'OA undertakes not to communicate their contents to any third party except in case of injunction by a tribunal or administrative authority. AGIL'OA undertakes to implement the technical means to assure the security of the User's Data and, in particular, to protect them against any accidental or illicit destruction, accidental loss, alteration, diffusion, or unauthorised access, particularly when the processing includes transmissions of Data in a network, as well as against any form of illicit processing or communication to unauthorised persons.

11.2 In principle, AGIL'OA carries out daily backups of the Data. However, for technical reasons these backups may not occur at the above frequency and essentially concern the general content of the Platform. **Moreover, the Certified Contractor is informed that the Data and Results shall only be conserved on the Platform for a maximum period of one year.** Consequently, the Certified Contractor is invited to effect his/her own backups on his/her own hardware so as to prevent the loss or deterioration of the Data hosted.

11.3 In any event AGIL'OA's liability for losses of Data shall be limited according to the conditions under article 14 of the General Conditions

11.4 AGIL'OA does not collect any data of a personal nature in the course of performing Services, the Data the Certified Contractor transmits being anonymous.

Furthermore, as host AGIL'OA only acts as the Certified Contractor's sub-contractor for hosting the Data of a personal nature collected from the Users (especially in the identification sheets).

Accordingly, it is the Certified Contractor's responsibility to effect all the formalities necessary with the competent authorities to ensure the personal Data collected from the Users in the course of their activity is processed legally.

## **12. Discussion forums**

12.1 On a dedicated site AGIL'OA provides the Certified Contractors with one or more forum(s) to enable them to exchange their information and experiences.

12.2 The Certified Contractor undertakes not to:

- Issue messages contrary to the laws and regulations or generally to public order and accepted principles of morality, and particularly messages contrary to the protection of minors;
- Make declarations or transmit any content of a political, racist, xenophobic, discriminatory, malevolent, indecent, insulting, defamatory, hateful, obscene, pornographic, or violent nature or harmful to persons, private life, confidentiality, or current laws and regulations;
- Send items with contents (particularly photos, videos, and sound recordings) (i) which may identify a person, (ii) include personal information concerning third parties (iii) include elements protected by copyright or any other intellectual property right;
- Hinder or hamper the normal working of the forum, especially by using a virus or sending messages in mass;
- Denigrate the services or injure the reputation of AGIL'OA, its employees, or its directors;

12.3 AGIL'OA or any person or entity it designates shall be entitled to withdraw or delete any contribution whether personalised or editorial that may be in breach of these conditions and more generally of current legislation.

12.4 Consequently, it is the Certified Contractor's responsibility to use the contents of the forums at his/her own risk. It is also his/her responsibility to effect the verifications required before any use of the forums' contents.

12.5 In the event of the dissemination of illicit content or breach of current legal provisions capable of incurring civil or criminal liability and/or able to harm the rights of a third party, AGIL'OA reserves the right to interrupt access to the Platform without delay and without prior notice and immediately

terminate the Contract as of right without prejudice to any claims for damages to which AGIL'OA may be entitled.

### **13. Liabilities**

13.1 It is expressly agreed between the parties that AGIL'OA is only bound to use its best efforts. Consequently, it may only be held liable for a fault the Certified Contractor proves it has committed.

13.2 AGIL'OA shall not be liable for any damage having its origin in the Certified Contractor's interpretation of the Results concerning the Users. The Certified Contractor shall have the sole authority over and the sole liability for any use of the Results.

13.3 In no case may AGIL'OA be held liable for any action or proceedings by a third party, particularly due to information, images, sounds, or texts collected and hosted in the course or on the occasion of using the Platform, and which may be contrary to current legislation and regulations, especially as concerns the protection of personal Data and health Data in particular. The Certified Contractor shall guarantee AGIL'OA at its first request against any damage that may result from any claims by a third party on these grounds.

13.4 Expressly, AGIL'OA shall not be held liable for indirect damages the Certified Contractor may suffer such as in particular commercial loss, loss of Order, any commercial disruption, loss of profit, or damage to brand image that may result from using the Results, from the Platform, or from the Certified Contractor's negligence of contractual obligations. Any legal action by a third party against the Certified Contractor constitutes indirect damage.

13.5 In the event that AGIL'OA is held liable by a definitive legal decision or in an out-of-court settlement between the Parties, the damages it shall incur shall by common agreement be expressly limited to the amount exclusive of tax the Certified Contractor has actually paid AGIL'OA in the twelve (12) months preceding the date of the Certified Contractor's out-of-court or, failing this, legal claim.

### **14. Confidentiality**

14.1 The Certified Contractor acknowledges that owing to his/her relationship with AGIL'OA both the latter and the Certified Contractor may have access to certain information or items related to the other party's activities which may concern client files or any other items which are potentially confidential and substantially valuable for each respective party, and which may be devalued should they be disclosed to a third party. Consequently, both the Certified Contractor and AGIL'OA undertake not to use for their own purposes or a third party's, or disclose to a third party, any information they should acquire through this contractual relationship, except in case of legal obligation (by court-ordered injunction for example). Furthermore, the Certified Contractor and AGIL'OA confirm they shall take all the appropriate measures to protect this information's confidentiality.

14.2 The parties agree that their obligation of confidentiality does not apply to the Information for which one party can prove:

- it became known to the public before or after its date of transmission otherwise than through his/her act;
- it had been legally obtained from a third party having the right to communicate;
- it has been communicated on injunction by a court or administrative authority.

14.3 In the event, on any grounds whatsoever, of the Contract's termination or after its term this confidentiality clause shall remain valid and any information or item in possession of either party must be immediately returned to its proprietor or destroyed.



## **15. Outsourcing**

AGIL'OA is entitled to outsource the Services in whole or part to any third party of its choice. Nevertheless, AGIL'OA shall remain exclusively liable to the Certified Contractor for all its obligations under this Contract

## **16. Force majeure**

16.1 An event of *force majeure* is deemed to be an event outside the parties' control, that is to say unforeseeable, unstoppable, and exterior, such as but without this list being exhaustive, a strike (EDF [*Electricité de France* – French electricity grid], by the staff of the operator(s), or any other staff), a power cut (such as of electricity), a civil or foreign war, riots or popular movements, terrorist attacks, losses of internet connectivity due to the public and private operators on which AGIL'OA relies.

16.2 To be able to benefit from the terms of this article the party wishing to invoke a case of *force majeure* must, on penalty of being barred, notify it to the other party by registered delivery with acknowledgement of receipt as soon as he/she becomes aware of the occurrence of such an event and at the latest within a period of eight (8) calendar days from the appearance of the said event.

16.3 Throughout its duration the *force majeure* event suspends the performance of his/her obligations for the party invoking it. In every case the party affected by the *force majeure* event must do everything in his/her power so as to prevent, eliminate, or reduce the causes of the delay and resume the performance of its obligations as soon as the event invoked comes to an end.

16.4 If the case of *force majeure* should exceed sixty (60) days from the above notification the party affected shall be entitled to terminate the Contract as of right and without compensation without any formality other than sending the other party a registered delivery with acknowledgement of receipt.

## **17. Agreement on proof**

The computerised registers conserved in the information processing systems of the Platform in reasonable security conditions shall be deemed to be proofs of communication and of the Orders between the parties.

By express agreement the validation “clicks” are deemed to be valid as signature and approval for the various contractual documents subject to the Certified Contractor's agreement, and particularly these General Conditions of Services.

Archiving the Order forms and invoices is effected on a reliable and durable medium that can be produced as evidence.

## **18. Non-renunciation**

No waiver by either Party of his/her rights subsequent to other's failure to respect any of his/her obligations under the Contract may be deemed to be a renunciation of the obligation in question.

## **19. Assignment**

19.1 The Certified Contractor may not, whether directly or indirectly, in whole or in part, or pursuant to a legal provision, or in any manner whatsoever assign, transfer, or delegate any of his/her obligations whatsoever under this Contract to a third party without AGIL'OA's prior written agreement. Any attempt to assign, transfer, or delegate without such a prior written agreement shall be of no effect.



19.2 At any time AGIL'OA shall be entitled to transfer its rights and obligations under this Contract subject to the Certified Contractor being so informed.

**20. Applicable law – Attribution of jurisdiction**

20.1 These General Conditions are governed by French law.

20.2 FOR ANY DISPUTE CONCERNING THE INTERPRETATION AND/OR PERFORMANCE OF A CONTRACT OR OF ITS CONSEQUENT LEGAL TRANSACTIONS AND WHICH THE PARTIES CANNOT RESOLVE OUT OF COURT, JURISDICTION IS EXPRESSLY ATTRIBUTED TO THE COURT OF COMMERCE OF GRENOBLE.