GENERAL TERMS AND CONDITIONS

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GATEWAY SERVICE

GENERAL TERMS AND CONDITIONS - GATEWAY SERVICE

BETWEEN

Agile Telecom S.p.A., a company incorporated under the laws of Italy, with registered office at Via delle Magliaie 53 - 41012 Carpi (MO), Italy, registered in the Companies' Register of Modena, VAT number and tax code no. IT02804070361, in the person of its *pro tempore* Legal Representative ("**Agile**");

AND

The client, identified with the data provided by filling in the appropriate personal data sheet, in the person of its *pro tempore* Legal Representative or of an authorised proxyholder (the "**Client**").

The Client and Agile, each individually a "**Party**" and jointly the "**Parties**".

WHEREAS:

I.   Agile offers messaging services via short message services (SMS);

II.   Agile holds an appropriate authorisation for the provision of communication services pursuant to Article 25 of Legislative Decree 259/2003 as supplemented and amended;

III.   The Client intends to enter into an agreement with Agile for the provision of a service consisting of the Client's use of Agile's gateway to send SMS on the terms and conditions and as set out in more detail below (the "**Service**");

IV.   by this agreement (the "**Agreement**") the Parties intend to regulate the terms and conditions for the provision of the Service to the Client.

NOW THEREFORE,
THE PARTIES AGREE AS FOLLOWS.

1.   DEFINITIONS, RECITALS AND ANNEXES
1.1.   The Recitals and external links constitute an integral and substantive part of this Agreement.
1.2.   Unless the context requires otherwise or unless otherwise defined elsewhere in this Agreement, the following capitalised terms shall have the meanings set out below:
-        **Agreement**: shall mean this Agreement and the relevant external links;
-        **Activation Date**: shall mean the date of receipt by Agile of the fee provided for under the Agreement;

- **Applicable Personal Data Protection Legislation**: means Legislative Decree 196/2003, as subsequently supplemented and amended by Legislative Decree 101/2018, Regulation (EU) 2016/679, as well as the measures of the Data Protection Authority;

- **Personal Data**: any information concerning an identified or identifiable natural person;

- **SMS** and/or **Messages**: means short messages, i.e., concise messages with personalised or specialised content, or other information, sent directly to mobile phones, pagers, or other mobile devices using the Service.

2. SCOPE

2.1.   Agile, in accordance with the terms and conditions defined herein, undertakes to provide the Client with the possibility of using its gateway to send SMS messages.

2.2.   The Client may send the SMS purchased by setting an 11-character alphanumeric code ("**Alias**") as the sender.

2.3.   The Client shall only use Aliases that it actually owns or has a legitimate right to use under current applicable law, including intellectual property rights. Under no circumstances may the Client use Aliases that refer to entities or institutions – as said Aliases are expressly reserved for the latter – or that might otherwise constitute a breach of the law and/or the third-party rights.

2.4.   Before sending the messages, the Client must notify Agile of each Alias it intends to use in order to allow Agile to register the Alias in the database managed by Agcom (the "**Database**"). The Client hereby acknowledges that, lacking this communication, messages may not be sent with the Alias.

2.5.   If the Alias is not registered in the Database, the message may still be sent, but the Alias will be replaced by a numeric sender assigned by Agile.

2.6.   The Parties acknowledge that, pursuant to and within the limits of this Agreement, it is the Client who, under its sole responsibility, will draft the messages sent and manage, as data controller, the recipients' data.

3. USERNAME AND PASSWORD

3.1.   The Client shall have access to the Service by means of a username and password chosen by it, to be kept and used under his sole responsibility.

3.2.   The Client undertakes to maintain the highest level of confidentiality on its access credentials, thus remaining responsible for their safekeeping: the Client shall therefore be the sole liable party for any damage caused by the unauthorised use of such access credentials by third parties.

3.3.   In any case, the Client undertakes to immediately inform Agile of any theft, loss or unauthorised appropriation of access credentials by third parties, without prejudice to the right to suspend the Service as per the following clause 8.

4. DATA BANK

4.1.   The data bank of recipients of communications shall remain the exclusive property of the Client, who will act as an independent data Controller. Agile undertakes not to use said data bank, except as provided for and expressly required for the performance of this Agreement.

4.2.   Specifically, Agile will refrain from: a) transferring or making available to third parties the aforementioned data banks, in whole or in part, temporarily or permanently; b) using them in any way except for statistical purposes and to improve the Services; c) keeping a copy thereof, except for any temporary copies necessary for the operation of the Service and in accordance with the applicable legal framework, as well as in the event of express requests to this effect by the Client.

5.   PERSONAL DATA OF RECIPIENTS AND USE OF THE SERVICE

5.1.   The Client is aware that the processing of the recipients' Personal Data must be based on appropriate conditions of lawfulness, depending on the purpose that it intends to pursue as data controller. The Client therefore represents and warrants that the recipients' Personal Data shall be processed for lawful purposes and on the basis of appropriate conditions of lawfulness, in full compliance with the Applicable Personal Data Protection Legislation.

5.2.   It is expressly forbidden for the Client to use the Service for unlawful purposes, to send unsolicited messages which, as such, qualify as "undesired communications" pursuant to Article 130 of Legislative Decree no. 196/2003 (including but not limited to: sending advertising or direct sales material, carrying out market research or commercial communications, etc.), and/or sending messages to the addresses of recipients who have no relationship with the sender.

5.3.   In the event of non-compliance with these material obligations, even only once, and without prejudice to the right to compensation for damages, Agile reserves the right to terminate the Agreement under clause 12 below, without prejudice to the right to suspend the Service pursuant to the following clause 8 below.

6.   FEE AND PAYMENT METHODS

6.1.   In order to send SMS messages, the Client must first purchase a package expressed in Euro (hereinafter, the "**Package**" and the "**Fee**"), which can be viewed once the Client has registered and entered its client area at http://account.agiletelecom.com/user.

6.2.   For each SMS message sent, the Client shall pay a unit price indicated at http://account.agiletelecom.com/user.

6.3.   Once the pre-purchased Package has been used up, the Client will no longer be able to send additional SMS until a new purchase is made, unless the Parties have previously agreed on a credit limit.

6.4.   The Client acknowledges and accepts that the amount in Euro charged for each message may be subject to change. Any change in price will be notified by Agile to the Client by e-mail or fax. The price change will be immediately applicable from the date of Agile's official communication by e-mail or fax.

6.5.   The Client undertakes to pay the fees due for the provision of the Service at the times and according to the methods indicated in the "Online" order if the purchase is made remotely via the E-commerce website. If the Client fails to pay the fees due, in accordance with the methods indicated in the aforementioned order, Agile may, at its complete discretion and at any time, suspend the provision of the Service if, following specific communication to the Client sent as indicated in clause. 19 below, the Client has not cured its default within than 10 (ten) calendar

days from receipt of the aforementioned communication. It is also understood that if the Client fails to pay the agreed amount at the end of the period of 10 (ten) calendar days following the envisaged payment date, Agile may also terminate this Agreement in accordance with the clause 12 below, it being understood that - without prejudice to the provisions of the following paragraph 6.6 - Agile's right to request payment of the entire fee due and compensation for damages shall remain unaffected.

7.   TERM, CANCELLATION AND WITHDRAWAL

7.1.   The purchased package is valid for 12 (twelve) months from the date of the most recent purchase. At the end of the period of 12 (twelve) months from the date of the most recent purchase, with prior notice to the Client, each unused Euro of the package will be cancelled and the relevant amount will be definitively retained by Agile, without any possibility of refund or return; at the same time, all data recorded in the Software will be deleted without any possibility of restoration.

7.2.   The Client acknowledges the exclusion of any right of withdrawal.

8.   SUSPENSION OF SERVICE

8.1.   In the event of temporary malfunctioning of the electricity network and/or hardware failure, Agile may suspend the provision of the Service for the time necessary to solve the problem. Agile will also be entitled to suspend the Service in the event of suspected unauthorised fraudulent use or use in a manner that does not comply with contractual or regulatory obligations.

8.2.   It is understood that, if it suspends the Service, Agile shall take all necessary actions to restore it as soon as possible, unless such suspension is due to suspected fraudulent use, in which case the Service will be restored when the cause of suspension has been removed.

9.   SERVICE LEVELS AGREEMENT AND SUPPORT

9.1.   Agile will deliver the messages to mobile terminals as quickly as commercially possible as soon as the devices of these users are enabled to receive the messages. However, due to factors beyond its control, Agile does not guarantee latency times or final delivery to mobile terminals. If the messages sent by the Client cannot be delivered to potential users, they will be stored for a maximum of 48 hours and will be deleted at the end of this period.

9.2.   Agile will provide support to the Client by: a) telephone; b) e-mail by opening support tickets at help@agiletelecom.com. When opening a support ticket, Agile staff will endeavour to respond in a timely manner.

9.3.   Network coverage. Agile shall keep an up-to-date list of the mobile operators covered at all times. Agile reserves the right to amend the list by adding or removing operators, as appropriate. Although Agile will cover as many mobile operators as is commercially feasible, Agile makes no commitment, representation or warranty that any particular mobile operator will continue to be reachable at any time in the future. The current list of mobile operators is available from Agile for consultation upon request.

10.   CLIENT'S WARRANTIES AND LIABILITY

10.1.   The Client represents and warrants that: (i) all information provided by it to Agile is complete, accurate and up to date; and (ii) the Service will be used in accordance with applicable legal and regulatory requirements, including, without limitation, with reference to the legislation on the processing of Personal Data applicable from time to time.

10.2.   The Client shall be the sole responsible party for the content of the messages (including any applicable advertising content) and for the information conveyed with them, and for scheduling and managing all messages. Agile, therefore, assumes no responsibility for the above. The Client undertakes to use its best endeavours to ensure that the content of the messages complies with the regulations in force and with the end-users' requirements and that it does not harm Agile's image. In this respect, the Client shall act in such a way as to avoid any risk of confusion between itself, Agile and the mobile operators. The Client undertakes to indemnify and hold Agile harmless against all damages, losses, liabilities, costs, charges and expenses, including any commissions and legal fees which may be incurred or charged to Agile or for which Agile has received a payment claim, which would not have been incurred, charged or claimed if (i) the Client had performed its obligations under this Agreement and (ii) the representations and warranties made by the Client in entering into this Agreement had been true, accurate, complete and not misleading. Furthermore, the Client undertakes to indemnify and hold Agile harmless from all damages, losses, liabilities, costs, charges and expenses, including commissions and expenses that may be incurred or charged to Agile or for which the latter has received a payment claim, otherwise related to the sending of the information contained in the Client's messages, even in the event of claims for damages made by third parties for any reason.

10.3.   The Client shall indemnify Agile for all losses, claims, costs, expenses and liabilities that Agile may incur as a result of the content of any message or the Client's use of Agile's services for any unlawful or offensive purpose.

11.   AGILE'S WARRANTIES AND LIABILITY

11.1.   Agile represents and warrants that: (a) it has full power and authority to enter into and perform this Agreement in its entirety; and (b) it is an authorised entity under Article 25 of Legislative Decree 259/2003, as amended.

11.2.   Except in the event of wilful misconduct or gross negligence, Agile's maximum total liability under this Agreement shall not exceed the lesser of (a) the amount of Euro 10,000 (Euro ten thousand) and (b) the total amount paid to Agile by the Client for the provision of the Service in each year in which the Agreement was in force. In any case, it is understood that Agile shall only be liable for direct damages that the Client may suffer as a result of specific and proven actions/omissions attributable to it under this Agreement.

12.   EXPRESS TERMINATION CLAUSE

12.1.   This Agreement shall be considered as automatically terminated by Agile by operation of law in accordance with Article 1456 of the Italian Civil Code, subject to simple written notice, which may be sent as out in clause 20 below, in the event of breach of the material obligations established under clauses 2 (*Scope*), 5 (*Consent of recipients*), 6 (*Fee and payment methods*) and 15 (*Processing of personal data*), as well as in the event that the Client goes into liquidation.

12.2. The termination of the Agreement, in the circumstances described above, shall take place automatically by operation of law upon receipt by the Client of the aforementioned notice indicating Agile's intention to trigger the express termination clause. In any case, Agile reserves the right to demand payment of the fees accrued and not yet collected and/or to enforce the Deposit up to the amount of said fees.

13. INTELLECTUAL PROPERTY RIGHTS

13.1. The Client acknowledges and agrees that Agile owns all right, title and interest in all intellectual property associated with the performance of the Services, including, without limitation, the Agile website, Agile Brand, Agile Content, and any source and object code. This Agreement shall never be construed as granting a licence or transferring ownership of a Party's rights in the above-mentioned distinctive signs or patents, models and designs to the other Party.

13.2. Unless otherwise agreed in writing by the Client with Agile, nothing in the Agreement shall give the Client the right to use any of Agile's trade names, trademarks, service marks, logos, domain names and other distinctive signs of the Agile's trademark.

14. FORCE MAJEURE

14.1. Agile shall not be liable in any capacity for any breach of this Agreement resulting from causes beyond its reasonable control or from force majeure or unforeseeable circumstances, such as, without limitation, civil unrest, acts of terrorism and war, strikes, riots, tornadoes, hurricanes, floods, fires, landslides and mudslides, prohibitions and/or impediments imposed by laws and/or binding measures that have occurred after the execution of this Agreement. In the event of interruption of the Service due to an event of force majeure, Agile will immediately notify the Client of this and of the cessation of said event. If the events referred to in this clause last longer than three months, each Party shall be free to withdraw from the Agreement, by written notice to be sent by registered letter with return receipt or by certified email (PEC) at least 15 days before the effective date of the withdrawal.

15. PERSONAL DATA PROCESSING

15.1. The Parties mutually acknowledge that in the performance of activities under this Agreement, Personal Data of the personnel in charge of managing the performance of this Agreement, relevant under the Applicable Personal Data Protection Legislation, may be transmitted or otherwise made accessible by one Party to the other.

15.2. Each Party undertakes to process Personal Data, both in paper and electronic form, in compliance with suitable and adequate security measures to protect the privacy of the persons concerned, in full compliance with the Applicable Personal Data Protection Legislation, for the sole purpose of performing and managing this Agreement from an administrative/accounting point of view. Agile's privacy policy is available at the following address https://agiletelecom.com/privacy-policy.

15.3. Each Party acknowledges that the provision of Personal Data is necessary for the performance and management of the contractual obligations, with the consequence that the refusal to provide such Personal Data would not allow the execution of this Agreement and also

undertakes to process Personal Data lawfully and fairly, collecting and recording the same for specific, explicit and lawful purposes, committing to verify that the data are adequate, relevant and limited to what is necessary for the purposes for which they are processed.

15.4.   The Parties mutually acknowledge that Personal Data shall be stored by each Party for the time strictly necessary for the performance and management of its respective obligations under the Agreement. As a general principle, Personal Data will be stored for the entire period of the contractual relationship and, subsequently, for specific purposes in accordance with the law (reference is made, without limitation, to the obligation to keep accounting records for a period of 10 years, as provided for in Article 2220 of the Civil Code).

15.5.   The staff in charge of managing the performance of this Agreement - as data subjects - is guaranteed the rights expressly granted by the Applicable Personal Data Protection Legislation, consisting of the right to lodge a complaint with the supervisory authority if the statutory requirements are met and to receive information on the existence of the processing, as well as to obtain the updating, rectification, restriction, completion or erasure of data processed in breach of the law, including data the storage of which is not necessary in relation to the purposes for which the data were collected or subsequently processed. To this end, each Party hereby undertakes to inform the staff in charge of managing the performance of this Agreement of the information relating to the processing of Personal Data and to indemnify and hold the other Party harmless from any adverse consequence that may arise as a result of non-compliance with the provisions of this clause and/or any breach of the legislation in force on privacy and Personal Data protection.

16.   DATA PROCESSING AGREEMENT

16.1. Since the provision of the Service involves the processing of personal data by Agile on behalf of the Client, with the signing of this Agreement, pursuant to art. 28 of Regulation (EU) no. 2016/679, the Client, having deemed Agile a suitable and reliable subject, appoints Agile as Data Processor or, as the case may be, Sub-Processor for the processing of personal data processed for the purpose of providing the Service. Agile accepts this appointment at the same time as its subscription, confirming the direct and in-depth knowledge of the obligations assumed with it and guaranteeing that it possesses the skills, experience, and skills, including technical ones, to cover this role.

16.2. In particular, Agile undertakes to process Personal Data in compliance with the instructions and provisions set forth in the Data Processing Agreement attached as Annex C to this Agreement, which forms an integral part of it and which is intended as fully referred to here.

17.   ADVERTISING

17.1.   The Client authorises Agile to use its name and logo in presentations, marketing materials, client lists and financial reports. The use by the Client of the logo, trade name or any other distinctive sign relating to Agile must be requested in advance and authorised in writing by Agile.

18.   ADDITIONAL FUNCTIONS AND APPLICATION PROGRAMMING INTERFACE

18.1.   Agile provides the Client with functionalities, tools and applications for integration with external software ("**API**" or "**Application Programming Interface**"). Through the API, the Client will be able to create customised integrations between the Services and third-party applications in order to facilitate automatic data update functionalities. The Client shall be the sole party responsible for the use of the API, and the Client undertakes to use it with appropriate tools and in accordance with the provisions of this Agreement. The use of the functionalities made available by third parties may be subject to acceptance of the contractual conditions imposed by them.

19.   COMMUNICATIONS AND CONTACT POINTS

19.1.   Any and all notices, communications and/or other documents relating to, or in connection with, this Agreement shall be in writing and, unless otherwise specified, shall be made by (i) delivery by hand, confirmed by regular receipt signed by the receiving Party, or (ii) shipment by express courier and/or registered letter with return receipt or (iii) by certified email (PEC), confirmed by regular delivery receipt, or (iv) by e-mail (or other method expressly agreed between the Parties), to the contact points that each Party may communicate to the other after the Activation Date in accordance with the above provisions - which the Parties acknowledge as addresses for service for the purpose of receiving the aforesaid communications and/or documents.

19.2.   Any communication sent in accordance with the provisions of this article 18 shall be deemed to have been received by the addressee thereof: (i) in the case of delivery by hand, on the date of receipt; (ii) in the case of dispatch by courier or by registered letter with return receipt, on the date of signing of the return receipt; (iii) if by certified email (PEC), on the date and at the time indicated in the receipt issued by the certified e-mail server; (iv) if by e-mail, at the time of its receipt.

20.   MISCELLANEA

20.1.   This Agreement, of which all the links referred to herein are an integral and substantive part, constitutes the entire agreement made between the Parties with respect to the subject matter hereof and fully supersedes all prior agreements, understandings, arrangements or negotiations, written or oral, between the Parties concerning the subject matter hereof.

20.2.   The headings in this Agreement are for ease of reference only and shall not be construed as restricting or limiting any of the terms hereof or as affecting the meaning or interpretation of this Agreement.

20.3.   The fact that either Party tolerates or fails to promptly enforce its rights under one or more provisions of this Agreement shall never be construed as a general and implied waiver by such Party of its rights as a result of such breach, nor shall it prevent such Party from subsequently requiring strict and precise compliance with any and all provisions of the Agreement.

20.4.   Without prejudice to the provisions of Article 1419 of the Civil Code, if one or more of the provisions of this Agreement is or becomes invalid or unenforceable under applicable law, or as a result of rulings by competent courts or arbitral tribunals, the validity and enforceability of the

remaining provisions of this Agreement shall not be affected in any way, unless such provision constituted a determining reason for entering into this Agreement and, more generally, unless the possibility to reach the purpose of this Agreement is affected.

20.5.   Agile may unilaterally amend this Agreement. Subsequent use of the Service shall be deemed to constitute acceptance of the same amendments and/or additions by the Client.

20.6.   The Client is expressly prohibited from assigning this Agreement and the rights arising therefrom, in whole or in part, for any reason, without Agile's prior written consent. In any case, it is understood that Agile is hereby authorised to use third parties and/or operators to provide the Service.

21.   APPLICABLE LAW AND JURISDICTION

21.1.   This Agreement shall be governed by and construed in accordance with the laws of Italy.

21.2.   All disputes arising out of this Agreement, including with respect to the interpretation, validity, effectiveness and/or performance of this Agreement that have not been previously referred to the Italian Communications Authority pursuant to Article 23 of Legislative Decree No. 259/2003, shall be submitted to the exclusive jurisdiction of the Court of Carpi.

The Client declares, pursuant to of Articles 1341 and 1342 of the Italian Civil Code, that it has carefully read and expressly accepts the contractual clauses provided for in the following clauses 4 (*Data bank*); 5.3 (*Consent of recipients - Termination*); 6.4 (*Fee and Payment Methods - Changes*); 6.5 (*Fee and Payment Methods - Termination and Suspension*); **Errore. L'origine riferimento non è stata trovata.** (*Fee and Payment Methods - Deposit*); 7 (*Term, Cancellation and Withdrawal*); 8 (*Suspension of Service*); 9 (*Service level Agreement and Support*); 10 (*Client's Warranties and Liability*); 11 (*Agile's Warranties and Liability - Limitation of liability*); 12 (*Express Termination Clause*); 20.6 (*Miscellanea - No Assignment*); 21 (*Governing Law and Jurisdiction*) of this Agreement and the Annex C

<u>ANNEX A</u>
DATA PROCESSING AGREEMENT

Agile Telecom S.p.A., a company incorporated under the laws of Italy, with registered office at Via delle Magliaie 53 – 41012 Carpi (MO), Italy, registered in the Companies' Register of Modena, VAT number and tax code no. IT02804070361, in the person of its pro tempore Legal Representative ("**Agile**" or the "**Processor**") and the Client, in the person of its acting Legal Representative (the "**Controller**" or "**Client**") have entered into a contract for the supply of the gateway service, involving the processing of personal data (hereinafter, as periodically amended or updated, simply the "**Agreement**").

This Data Processing Agreement (including its annexes, "**Data Processing Agreement**") contains the provisions of Article 28 GDPR as interpreted by the European Data Protection Board in Opinion 14/2019.

The Data Processing Agreement is entered into between Agile and the Client and supplements the Agreement. The Data Processing Agreement will be effective and supersede any other previously applicable agreement between the parties relating to the same subject matter (including any amendment or addendum to the processing of data relating to the Processor Services), from the Date of Effect and for the entire Period.

If you are entering into this Data Processing Agreement on behalf of the Client, you guarantee that: (a) you have full legal authority to bind the Client to this Data Processing Agreement; and (b) you agree on behalf of the Client, to this Data Processing Agreement. If you do not have the legal authority to bind the Client, please do not sign this Data Processing Agreement and pass it on to the competent representative.

1. Preamble
The Data Processing Agreement reflects the agreements of the parties on the processing of Client Personal Data as governed by European and Domestic Legislation.

2. Definitions
2.1 All capitalized terms in the Data Processing Agreement shall have the following meanings:

"**Supervisory Authority**" refers to a "supervisory authority" as defined in the GDPR.

"**Agile**" refers to Agile Telecom S.p.A. that is party to the Agreement.

"**Subsidiary**" refers to a legal entity belonging to a corporate group, which directly or indirectly controls has control or is controlled by another party.

"**Date of Effect**" refers to the date on which the Agile signed or the parties have otherwise agreed to the effectiveness of the Contract or Data Processing Agreement.

"**Client Personal Data**" refers to the personal data processed by Agile on behalf of the Client in the provision of the Processor Services.

"**Security Documentation**" refers to any security certification or documentation that Agile makes available in relation to the Processor Services as referred to in Appendix 2.

"**Period**" refers to the period from the Date of Effect until the termination of the provision of the Processor Services by Agile pursuant to the Agreement.

"**Agile Entity**" refers to Agile Telecom S.p.A. and/or any other Subsidiary of Growens S.p.A.

"**GDPR**" refers to Regulation (EU) 2016/679 of the European Parliament and of the Council dated 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, repealing Directive 95/46/EC.

"**Incident**" refers to a breach of Agile security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to Client Personal Data on systems managed or otherwise controlled by Agile.

"**Notification E-mail Address**" means the email address communicated by the Client to Agile when activating the service and to which Agile will transmit privacy and administrative communications..

"**Additional Instructions**" refers to the additional instructions which reflect the parties' agreement on the additional conditions governing the processing of certain data in relation to certain Processor Services.

"**European and Domestic Legislation**" refers to the GDPR and the EU Member State legislation applicable to the processing of Client Personal Data.

"**Transfer Mechanisms**" refers to a binding decision issued by the European Commission allowing the transfer of personal data from the EEA to a third country whose domestic law provides an adequate level of personal data protection. Where such binding decision is not available or effective, this definition refers to the EU Standard Contract Clauses approved as needed by the European Commission for the transfer of personal data, as well as the Binding Corporate Rules (BCRs).

"**Security Measures**" has the meaning set out in Section 7.1.1. (Security Measures on Agile systems);

"**EEA**" refers to the European Economic Area.

"**Processor Services**" refers to the services optioned in the Agreement and described collectively in Appendix 1.

"**Subprocessors**" refers to the third parties authorised under this Data Processing Agreement to process Client Personal Data in order to provide part of the Processor's Services and/or any related technical support.

2.2 The terms "**Personal Data**", "**Data Subject**", "**Processor**", "**Controller**" and "**Processing**" have the meanings indicated in the GDPR.

2.3 The terms "**include**" and "**included**" are illustrative and are not the only examples of a particular concept.

2.4 Any reference to a law, regulation, statute or other legislative act is a reference to these as amended or reformulated as required.

2.5 If this Data Processing Agreement is translated into another language and there is any discrepancy between the English text and the translated text, the English text shall prevail.

3. Period

This Data Processing Agreement shall be effective for the entire Period and until the Processor deletes all Client Personal Data.

4. Scope of Application

4.1 **Application of Processor Services**. This Data Processing Agreement applies only to the services for which the parties agreed to enable, and therefore to the services specified in the Agreement.

4.2 **Application of Additional Instructions**. During the Period, the Controller may provide Agile with Additional Instructions, which Agile may not refuse without just cause if such Additional Instructions are necessary to permit compliance of the Controller with any European or domestic legislation. In all other cases, Agile has the faculty to negotiate the content of the Additional Instructions with the Controller and will be under no obligation to implement them until an agreement is reached. Once both Parties have confirmed the Additional Instructions, these shall be considered integral part of this Data Processing Agreement.

4.3 **Costs due to the application of Additional Instructions.** The Additional Instructions and/or supplements, amendments or reductions thereto shall not lead to any additional costs to Agile; if this is not the case, the Controller acknowledges and accepts that all costs directly or indirectly due to the adjustment by Agile to the Additional Instructions, shall be at the exclusive expense of the Controller.

5. Data processing

5.1 **Roles, responsibilities and instructions.**

5.1.1 The parties acknowledge and agree that: (a) Appendix 1 describes the subject matter and details of the processing of Client Personal Data; (b) Agile acts as Processor of Client Personal Data under European and Domestic Legislation; (c) Client acts as Controller or Processor, as applicable, of Client Personal Data under European and Domestic Legislation; and (d) each party shall comply with the obligations applicable to it under European and Domestic Legislation with respect to Client Personal Data.

5.1.2 **Authorization by the third Controller**. If the Client acts as Processor on behalf of a Subsidiary of the Client or other Controller, Client assures Agile that the instructions and actions of the former in relation to Client Personal Data, including the appointment of Agile, have been authorized by the respective Controller.

5.2 **Controller Instructions**. By entering into this Data Processing Agreement, the Controller appoints Agile to process Client Personal Data: (a) only in accordance with applicable law: (b) only to supply the Processor's Services and any related technical services; (c) as further specified/indicated by Client through its use of the Processor's Services (including changes to the settings and/or functionality of the Processor's Services) and any related technical support; (d) as documented by Contract, including this Data Processing Agreement; and (e) as further documented in any written instructions provided by the Controller to Agile as further instructions for the purposes of this Data Processing Agreement.

5.3 **Agile compliance with the instructions**. Agile shall comply with the instructions given in Section 5.2 (Controller Instructions) unless the European or National Legislation to which it is subject requires Agile to conduct different or further processing of Client Personal Data (e.g. transfer of Personal Data to a third country or international organization), in which case Agile

shall promptly inform Client at the Notification E-mail Address (unless such legislation prohibits Agile from doing so on significant grounds of public interest).

6. Erasure and export of data.

6.1 **Erasure and export for the Period.**

6.1.1 **Processor Services with export functionality.** If the Processor Services include the possibility for the Controller to export Client Personal Data autonomously and in interoperable format, Agile shall ensure, insofar as possible, that this operation is guaranteed for the entire Period and in any case in compliance with any further provisions contained in the Agreement.

6.1.2 **Processor Services with erasure functionality**. If the Processor Services include the possibility for the Client to independently erase Client Personal Data, Agile shall ensure, insofar as possible, that this operation is guaranteed for the entire Duration, unless European or domestic legislation requires storage of such data for a longer period. In the latter case, Agile shall process Client Personal Data only for the purposes and period defined by such legislation. Any further, specific provisions contained in the Agreement shall remain valid in any case.

6.2 **Erasure on Period expiry**. Upon expiry of the Period, Client shall order Agile to erase all Client Personal Data (including existing copies) from Agile systems in accordance with the applicable law. Agile shall execute this instruction as soon as reasonably possible, unless European and domestic requires further storage in compliance with art. 2.7 of the Contract, which is deemed to be referred to in full herein.

7. Data security.

7.1 **Security measures and assistance by Agile.**

7.1.1 **Security Measures on Agile systems**. Agile shall adopt and maintain technical and organizational measures to protect Client Personal Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access as described in Appendix 2. Taking into account the state of the art and the costs of implementation, as well as the nature, scope, context and purpose of the processing carried out through the Processor Services, as well as the variability, likelihood and severity of the risk to the rights and freedoms of natural persons, Appendix 2 shall at all times include security measures: (a) to help ensure the ongoing confidentiality, integrity, availability and resilience of Agile systems and services; (c) to help restore personal data promptly following an incident; and (d) to periodically verify effectiveness of the measures. Agile has the right to update or amend the Security Measures, provided that such updates and modifications do not lead to degradation of the overall security of Processor Services.

7.1.2 **Security Measures for Agile personnel.** Agile shall take appropriate steps to ensure compliance with the Security Measures by all persons operating under its authority, including its employees, agents, contractors and Subprocessors, insofar as applicable to the scope of their services, including assurances that all persons authorized to process Client Personal Data have signed non-disclosure agreements or are subject to appropriate statutory obligations to of confidentiality in accordance with European and Domestic Legislation. Agile shall also manage all obligations associated with the appointment of system administrators and personnel responsible

for managing and maintaining the Processor Services, in compliance with the provision of the Supervisory Authority dated 27 November 2008.

7.1.3 Agile data security assistance. Agile shall assist the Controller in ensuring compliance with any obligations regarding the security of personal data and personal data breaches, including (if applicable) the obligations of the Controller pursuant to Articles 32 to 34 of the GDPR, through:

(a) the implementation and maintenance of Security Measures in accordance with Section 7.1.1. (Security Measures on Agile systems);

(b) the implementation of the provisions of Section 7.2 (Data Incidents); and

(c) providing the Controller with Security Documentation in accordance with Section 7.5.1 (Review of Security Documentation) and the information provided for in this Data Processing Agreement.

7.2 Data Incidents.

7.2.1 Due Diligence. Agile adopts due diligence in monitoring the security of Client Personal Data processed in the provision of the Processor Services.

7.2.2 Incident Notification. In the event Agile becomes aware of an incident, Agile shall: (a) inform the Controller of the Incident without undue delay; and (b) promptly take reasonable steps to mitigate any damage and secure the Client Personal Data (c) cooperate with the Controller in the investigation of the causes and gravity of the Incident.

7.2.3. Incident Details. Notifications made pursuant to Section 7.2.2 (Incident Notification) shall describe the details of the incident to the greatest possible extent (also through additional notifications), including the categories and approximate number of Data Subjects involved and the personal data records affected, the potential risks to the Data Subjects and the steps that the Agile has taken or recommends the Client adopts to address the Incident and mitigate its effects. If it is not possible to provide the above specific information within the time allowed, Agile shall explain the reasons for the delay to the Controller, in any case providing the Controller with any initial information concerning the breach for the purposes of the related notification.

7.2.4 Delivery of Incident Notification. Agile shall deliver notification of any Incident to the Notification E-mail Address.

7.3 Client security responsibility and assessment.

7.3.1 Controller Security Responsibility. Without prejudice to the obligations of Agile under Sections 7.1 (Security Measures and Assistance by Agile) and 7.2 (Incidents), the Controller acknowledges that it is the sole party responsible for the use of the Processor Services, including the protection of authentication credentials, systems and devices used by the Controller to access the Processor Services.

7.4 Security Certification. To evaluate and help ensure the continued effectiveness of the Security Measures, Agile may, at its sole discretion, supplement the Security Measures and Security Documentation with certifications (e.g., ISO27001), codes of conduct and/or certification procedures.

7.5 Checks and Audits.

7.5.1 Security Documentation Review. In order to demonstrate Agile compliance with its obligations under this Data Processing Agreement, Agile shall make information on the technical, organisational and security measures available to the Client, in addition to any other information

available and necessary for Client compliance with regulations, and which should be formally requested in writing by the Client for compliance with its legal obligations and to demonstrate the adoption of adequate technical and organizational measures.

7.5.2 **Client Audit Rights**. The parties agree that:

(a) Agile shall contribute to the inspection and audit activities the Client wishes to conduct, either directly or through a third party appointed by the latter;

(b) such activities shall be conducted with a view to safeguarding normal Agile operations;

(c) the use of the information which the Controller and any third party appointed by the Controller should become aware of during the audit must be previously regulated by a specific non-disclosure agreement.

7.5.3 **Further Conditions for Audits**. To conduct an audit:

(a) the Controller shall send the request for audit to the Controller pursuant to Section 7.5.2(a) as described in Section 12.1 (Agile Contacts), giving notice of at least 15 (fifteen) working days, it being understood that such activities may not be conducted by the Controller more than once (1 time) per year and, in any case, if less than 12 (twelve) months have passed since the last audit by the Controller;

(b) upon receipt of a request pursuant to Section 7.5.3(a) from the Controller, Agile undertakes to discuss and agree in advance on the start date, scope and duration, security and confidentiality controls applicable to the audit pursuant to Section 7.5.2(a);

(c) nothing in this Data Processing Agreement shall require the Agile or its Subsidiaries to disclose or grant access by the Controller or third-party auditor to:

> (i) data of any other client of Agile;
>
> (ii) any Agile internal accounting or financial information;
>
> (iii) any Agile trade secret or know-how;
>
> (iv) any information that could compromise the security of Agile systems or premises; or cause Agile to breach its obligations under European and Domestic Legislation or its security obligations toward the Controller or third parties; or
>
> (v) any information to which the Controller or third-party auditor seeks access for reasons other than the fulfilment in good faith of the Controller's obligations under European and Domestic Legislation.

(vi) audits shall be subject to a specific confidentiality agreement between all parties involved.

7.5.4 The Controller acknowledges and accepts that all costs due to the conduction of audits pursuant to this Section 7.5 (such as, for example, the costs of personnel and any appointed external consultants) shall be at its exclusive expense.

8. Data protection impact assessments and prior consultation.

Agile agrees (considering the nature of the processing and the information available to Agile) to provide the Controller with any reasonable assistance in ensuring compliance with any obligations of the Controller regarding data protection impact assessment and prior consultation, including any obligations of the Controller pursuant to articles 35 and 36 of the GDPR.

9. Rights of Data Subjects.

9.1 **Response to Data Subject requests**. Agile ensures adequate protection of the rights of Data Subjects, assisting the Client in the fulfilment of its obligation to follow up requests from Data Subjects to exercise their rights, even if such requests are received by Agile. In this event, Agile shall provide the Data Subject with the address for communicating their request directly to the Controller. The Controller shall remain the sole party responsible for responding to such requests.

9.2 **Agile assistance in Data Subject requests**. Agile agrees (considering the nature of the Client Personal Data processing) to provide reasonable assistance to the Controller in the fulfilment of its obligations regarding their rights pursuant to Chapter III GDPR through: (a) where possible, the provision of specific functionalities in the Processor Services; (b) compliance with the commitments pursuant to Section 9.1 (Response to Data Subject requests).

10. Data Transfers.

10.1 **Data storage and processing facilities**. the Controller agrees and authorizes Agile to process (also through Subprocessors) Client Personal Data both within and outside the EEA, provided that such processing is supported by suitable Transfer Procedures, to be indicated in Appendix 3.

11. Sub processors.

11.1 **Authorization to use Subprocessors**. The Controller shall grant a general authorization to use Subprocessors for provision of the Processor Services.

11.2 **Information on Subprocessors**. Agile agrees to include the list of Subprocessors and the respective information in Appendix 3 of this Data Processing Agreement.

11.3 **Requirements for the involvement of Subprocessors**. When using a Subprocessor, Agile shall:

(a) ensure, through a written contract or other binding legal deed that:

(i) the Subprocessor may only access and utilise Client Personal Data to the extent necessary to fulfil the obligations subcontracted to it in accordance with the Contract (including this Data Processing Agreement) and the Transfer Procedures;

(ii) the data protection obligations pursuant to article 28(3) GDPR are applied to the Subprocessor;

(b) remain fully responsible for all obligations subcontracted to the Subprocessor.

11.4 **Faculty to object to change of Subprocessor**. The parties agree that:

(a) for the entire Period, Agile shall give notice of its intention to use new Subprocessors to process Client Personal Data, to the Notification E-mail Address. The notice shall include the Subprocessor's name, activities conducted and country of establishment, as well as the Transfer Procedure, if applicable;

(b) in the event the Controller considers, with due motivation and documentation, that a Subprocessor is not suitable to process Client Personal Data, it may oppose the use of said Subprocessor, by notifying Agile within 10 days of receiving notice of the intention of the latter to use new Subprocessors.

Agile may, at its discretion, i) not use the Subprocessor for the processing of Client Personal Data; or ii) withdraw from the Contract giving notice of such to the Client within 30 days of the

notice described in Section 11.4(a), it being understood that the Client shall be required to pay the entire amount due in accordance with the Contract;

(c) if no objection as set out in Section 11.4(b) is received, Agile agrees to send an updated version of Appendix 3 to the Notification E-mail Address, which shall become integral part of this Data Processing Agreement.

12. Agile Contacts.

12.1 **Agile Contacts**. The Controller may contact Agile with regard to all aspects of this Data Processing Agreement, at the e-mail/certified electronic e-mail addresses: a) indicated by Agile in the Contract; b) used by Agile during provision of the Processor Services to receive certain notifications from the Controller concerning this Data Processing Agreement.

13. Conflict.

13.1 **Conflict between the agreements of the parties**. In case of conflict or incoherence between the provisions of the Contract, the Data Processing Agreement and the Additional Instructions, if not otherwise established in this Processing Agreement, the following order of precedence shall apply: (a) the Additional Instructions; (b) the remaining provisions of the Data Processing Agreement; and (c) the remaining provisions of the Contract. Subject to any amendments to the Data Processing Agreement, the Contract shall remain fully valid and effective.

13.2 **Infringements of rules and regulations**. Any provision of the Contract, the Data Processing Agreement and/or the Additional Instructions in conflict with European and National Legislation shall be deemed not to be present herein and shall be replaced in its entirety by provision effectively infringed if it cannot be otherwise resolved through an agreement between the parties.

14. Jurisdiction.

14.1 In the event of dispute regarding the execution or interpretation of this Data Processing Agreement, the parties assign exclusive jurisdiction to the Court established by the Contract, expressly waiving any other provisions of international law or convention

Appendix 1: Subject matter and details of the data processing

Subject matter

The provision of the SMS messages service under the terms and conditions of the Agreement.

Duration of processing

The duration of processing shall include the entire Period plus the term until all Client Personal Data is deleted by Agile in accordance with the Data Processing Agreement and the provisions of the Contract.

Nature and scope of the processing of the Processor Services

Agile shall process Client Personal Data in order to provide the Processor Services in accordance with the instructions contained in the Data Processing Agreement.

Depending on the Processor Services chosen in the Contract, Client Personal Data may include the following:

Types of Data Subjects involved	Recipients of the SMS message sent by the Client through the Services of the Data Processor Any Data Subjects whose Personal Data are contained in the SMS message
Personal data processed	Number of the recipients Common identification data of the recipients Data that cannot be determined a priori

The parties may update the list of personal data processed to provide the Processor Services at any time.

Appendix 2: Security measures

As from the Date of Effect, Agile shall implement and maintain the Security Measures set out at the following links:

https://agiletelecom.com/gdpr-compliance/

Agile may periodically update or amend the following Security Measures, provided that such updates and amendments do not lead to a deterioration of the overall security of the Processor Services or in any case to a decrease in the security level agreed below.

Appendix 3: Sub processors

Part of the activities that allow Agile to provide the Processor Services may be delegated to Sub processors:

Company name	Processor Services or description of subcontracted activities	Place of establishment	Transfer procedure (where applicable)
Growens S.p.A.	Provision of IT services	Italy, European Union	N/A