



## atrain Digital Center License Agreement

This License Agreement governs the use of the software service ATRAIN and related services provided by atrain GmbH and sets out the obligations and rights of the Customer and ATRAIN. By signing the Order that includes utilization of and / or access to the atrain Digital Center (“DCEN”), the Customer accepts the terms and conditions of this Agreement and agree to abide by them.

### 1. Definitions

As used in this Agreement, the following capitalized terms shall have the meaning set out below.

“**Agreement**” means this License Agreement and its appendices, and any Orders executed between the Parties.

“**Customer**” shall mean the entity having ordered the ATRAIN Services hereunder.

“**Customer Data**” shall mean all Customer’s data that a User or another party acting on the Customer’s behalf uploads to the ATRAIN Product.

“**ATRAIN**” shall mean atrain GmbH, Unterer Kaulberg 3, D-96049 Bamberg (Registration Court Bamberg, HRB 4598).

“**ATRAIN Product**” and **ATRAIN Services** mean all services provided in relevance to the digital assessment center as referred to in the Order concluded between the parties. Unless otherwise agreed, the ATRAIN Product is offered as a Software as a Service.

“**Intellectual Property Rights**” shall mean copyrights and related rights (including database and catalogue rights and photography rights), patents, utility models, design rights, trademarks, trade names, trade secrets, know-how and any other form of registered or unregistered intellectual property rights.

“**Order**” shall mean a written (e-mail being sufficient) or electronic order or offer for the subscription of ATRAIN Services. “**Party**” shall mean Customer or ATRAIN (jointly the “**Parties**”).

“**Results**” mean all Intellectual Property Rights originating from Customer Data and in connection with performance of ATRAIN Product and ATRAIN Services.

“**Service Fees**” shall mean the fees charged by ATRAIN from time to time from Customer as agreed between ATRAIN and Customer.

“**Subscription**” shall mean the fixed period during which the Customer is entitled to use the ATRAIN Product as set forth in the Order.

“**Users**” shall mean those employees or contractors of the Customer who are entitled to use the ATRAIN Services under this Agreement, the number of which users shall be specified in the Order.

### 2. Use of ATRAIN Services

#### 2.1 License grant



If not otherwise stated in the Order, subject to the terms and conditions of this Agreement and the due payment of the Service Fees, ATRAIN hereby grants to the Customer and the Customer hereby accepts a limited, non-exclusive, non-transferable, and non-sublicensable right to the Customer to access the ATRAIN Product during the term of this Agreement.

The Customer and the Users may use the ATRAIN Product only and strictly in accordance with the terms of the Agreement, only for the internal purposes of the Customer.

ATRAIN shall have the right to deny the Customer's and the Users' access to the ATRAIN Services without any prior notice to the Customer and the Users, if ATRAIN suspects that the Customer and the Users uses the ATRAIN Services in violation of the terms of this Agreement.

## **2.2 Usage restrictions**

The Customer and the Users are strictly not permitted and not entitled to permit others to use the ATRAIN Services for any of the following:

- copy, modify, adapt, enhance, translate, supplement the ATRAIN Services, or change its specifications;
- distribute, rent, sub-license, lease the ATRAIN Services or otherwise make them available to or grant access to third parties without the prior written consent of ATRAIN;
- circumvent or try to circumvent any usage control, technical or logical protection schemes or anti-copy functionalities of the ATRAIN Services;
- reverse engineer or decompile the ATRAIN Services or access the source code thereof, or create a service competing with the ATRAIN Services, except as permitted by law;
- probe, scan or test the vulnerability of the ATRAIN Services;
- disrupt or unnecessarily burden the ATRAIN Services or other customers or users of the ATRAIN Services;
- use the ATRAIN Services in violation of applicable law;
- to use the ATRAIN Services in ways that violate intellectual property rights, business secrets, or privacy rights of third parties;
- use the ATRAIN Services to transmit any material that contains adware, malware, spyware, software viruses, worms or any other computer code designed to interrupt, destroy, or limit the functionality of computer software or equipment.

## **2.3 General obligations of Customer and the Users**

The Customer and the Users are responsible for acquiring and maintaining any and all network connections and all technical equipment required for using the ATRAIN Services and is liable for any costs thereof.

The Customer and the Users agrees that it shall indemnify and hold ATRAIN harmless from and against any and all liabilities, losses, damages, costs, and expenses (including reasonable legal fees and expenses) associated with any claim or action brought against ATRAIN that may arise from the Customer's use of the ATRAIN Products in breach of this Agreement, including claims that the Customer Data infringes the Intellectual Property Rights of third parties.

## **3. Security**

The Customer and the Users shall always comply with the security and administrative instructions provided by ATRAIN. The Customer and the Users shall use all reasonable endeavours to prevent unauthorised access to, or use of, the ATRAIN Services. The Customer and the Users shall ensure that



in case of issued user name, passwords, and equivalent information obtained by the Customer in conjunction with registration to ATRAIN Services are kept confidential and stored and used in a secure manner and cannot be accessed or used by third parties.

Where it is suspected that any unauthorised person has become aware of a user name and/or password, the Customer and the Users shall immediately inform ATRAIN thereof and change such user name and/or password.

The Customer shall be liable for any unauthorised use of the ATRAIN Services under Users' login credentials and any losses or damage incurred by ATRAIN where the Users reveal a user name/password to a third party.

#### **4. Authorized Users**

The permitted number/type of authorized Users and/or the volume of usage of the Customer's subscription of the ATRAIN Product are defined in the Order. ATRAIN reserves the right to charge excess usage fees for any excess usage of the ATRAIN Product.

The Customer undertakes not to provide access to the ATRAIN Product to anyone else than Users who have agreed to comply with this Agreement. An user account cannot be shared or used by more than one (1) individual User.

The Customer is aware of and acknowledges that the Customer is fully liable for the Users to whom the Customer affords access to the ATRAIN Product and for any use of the ATRAIN Product with the user names and/or passwords of the Customer.

The Customer shall remain liable for the Users' use of the ATRAIN Product under this Agreement.

The Customer is responsible for the use and utilization of the ATRAIN Services in its own operations and for the use of the content generated by the ATRAIN Services. ATRAIN has no liability for damages incurred by Customer as a result of the Customer utilizing the ATRAIN Services or information generated by the ATRAIN Services.

#### **5. Customer Data**

##### **5.1 Liability for Customer Data**

The Customer shall be responsible for its Customer Data and shall be liable vis-à-vis ATRAIN for ensuring that Customer Data does not infringe any third party rights nor in any other manner violates applicable legislation, and that the Customer and Users possess such necessary licenses and permissions from third parties as may be required in order to process the Customer Data/use the ATRAIN Services and grant the licenses granted herein. The Customer and the Users are obligated to promptly notify ATRAIN regarding any suspected breach or any violation of the provisions of this Section 5.

##### **5.2 Back-ups**

The Customer is solely responsible for maintaining backup copies of the Customer Data and shall take precautionary measures to backup and protect it.

#### **6. Personal Data**



## **6.1 Personal data processed by ATRAIN as data controller**

ATRAIN acts as data controller in relation to any personal data ATRAIN might collect and process in relation to Customer's subscription and use of the ATRAIN Services, such as contact details, payment information, and identification data on the Customer, the Users and Customer representatives. ATRAIN processes such personal data in accordance with its Privacy Policy in force from time to time.

## **6.2 Processing of personal data as data processor**

To the extent the Customer Data contains personal data, Customer acts as data controller under applicable data protection laws and ATRAIN processes, by providing the ATRAIN Services, such personal data on behalf of Customer as data processor for the purposes of this Agreement.

The types of personal data processed by ATRAIN hereunder may include, but not limited to, names, contact details, organization details, other narrative descriptions or any data relating to projects carried out by the Customer and other types of personal data contained in the Customer Data. The data subjects whose personal data is processed by ATRAIN may include names, email addresses and pictures.

In case ATRAIN processes personal data on behalf of Customer, the following terms shall apply:

- a) ATRAIN shall process the personal data only in accordance with the terms of this Agreement and any lawful and documented instructions reasonably given by the Customer from time to time. The Customer shall primarily use the functionalities of the ATRAIN Product to provide ATRAIN with any instructions set out in this Section. b) Customer's instructions must be commercially reasonable, compliant with applicable data protection laws and consistent with this Agreement. In case ATRAIN detects that any instruction given by Customer is non-compliant with Union or Member State law to which ATRAIN is subject, ATRAIN shall not be obliged to comply with such instruction and shall inform Customer of that legal requirement.
- c) ATRAIN shall ensure that the ATRAIN employees or other persons authorised to process the personal data have committed themselves to strict confidentiality or are under an appropriate statutory obligation of confidentiality.
- d) The Customer acknowledges that due to the nature of the ATRAIN Services, ATRAIN has no obligation to verify personal data Customer submits to ATRAIN for processing on behalf of Customer when Customer uses the ATRAIN Services. The Customer acknowledges that it shall be responsible for having a legal ground to process the personal data submitted to ATRAIN for processing on behalf of Customer. Further, the Customer is responsible for its lawful collection, processing and use of the personal data submitted to ATRAIN for processing on behalf of Customer, and for the accuracy thereof, as well as for preserving the rights of the individuals concerned. The Customer shall ensure that the relevant data subjects have been informed of, and have given their consent to, the processing as required by applicable data protection legislation.
- e) The Customer gives a general authorization to ATRAIN to use subprocessors for the processing of the personal data for the provision and use of the ATRAIN Services agreed upon.
- f) ATRAIN shall carefully select its subprocessors with the diligence of a professional service provider. ATRAIN ensures that the involved subprocessors are properly qualified, are under a



written data processing agreement with ATRAIN, and comply with data processing obligations equivalent to the ones which apply to ATRAIN under this Agreement. Where a subprocessor fails to fulfil its data protection obligations, ATRAIN shall remain fully liable to the Customer for the performance of the subprocessor's obligations. g) Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of ATRAIN's processing, ATRAIN shall implement and maintain appropriate technical and organizational security measures in order to safeguard the personal data against unauthorised or unlawful processing and damage, and in particular against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data. The technical and organizational measures adopted by ATRAIN are set out in ATRAIN's Privacy Policy in force from time to time.

h) ATRAIN processes personal data mainly within the EEA, but Customer accepts that ATRAIN may have personal data processed and accessible by ATRAIN or its subprocessors outside Customer's country of domicile or the EEA to provide the ATRAIN Services. In case the processing is subject to any EU data protection law and personal data is transferred from the European Economic Area ("EEA") for processing in any country outside the EEA that is not recognized by the European Commission as providing an adequate level of protection for personal data, Customer authorizes ATRAIN to enter, on behalf of Customer, into the standard contractual clauses adopted or approved by the European Commission applicable to processing outside the EEA, or ATRAIN shall provide for other appropriate safeguard for the protection of the personal data transferred outside the EEA as set out in the General Data Protection Regulation.

i) Customer or an auditor appointed by Customer shall have the right to audit and inspect the personal data processing activities of ATRAIN under this Agreement to examine the compliance of ATRAIN with the EU General Data Protection Regulation. Customer shall bear all costs for any such audit. Where an audit may lead to the disclosure of business or trade secrets of ATRAIN or threaten intellectual property rights of ATRAIN, Customer shall employ an independent auditor, that is not a competitor of ATRAIN, to carry out the audit, and the auditor shall agree to be bound to confidentiality to ATRAIN's benefit.

k) ATRAIN shall, without undue delay after having become aware of it, inform Customer in writing about any data breaches relating to Customer Data ("Breach"). ATRAIN's notification about the Breach to Customer shall include at least the following: i) description of the nature of the Breach; ii) name and contact details of ATRAIN's contact point where more information can be obtained; iii) description of the likely consequences of the Breach iv) description of the measures taken by ATRAIN to address the Breach, including, where appropriate, measures to mitigate its possible adverse effects.

## **7. Provision of ATRAIN Services**

### **7.1 General**

ATRAIN shall use its commercially reasonable efforts to correct or circumvent any Errors in the ATRAIN Product.

Error notification must be given by the Customer in writing (e-mail being sufficient) to the ATRAIN's support service in accordance with ATRAIN's instructions on the ATRAIN Website and within 14 days of the discovery of the Error. Notifications may be given via the Digital Center, or via email to [digitalcenter-support@atrain.com](mailto:digitalcenter-support@atrain.com).



## **7.2 Availability**

Notwithstanding alternatives agreement in an Order, ATRAIN shall have the right to schedule regular maintenance work of the ATRAIN Product outside office hours (9 am - 5 pm. German time) during which time the ATRAIN Product may be temporarily unavailable.

ATRAIN shall at all times have the right to temporarily suspend the provision of the ATRAIN Product during such office hours in accordance with the following, without any obligation to compensate any damages or service level failures to the Customer:

- if suspension is necessary in order to perform installation, change or maintenance work in respect of the ATRAIN Services; and
- if suspension is necessary due to severe data security risk to the ATRAIN Services or if required by law or public authorities.

If ATRAIN suspends the ATRAIN Services for the above reasons, it shall inform the Customer of the suspension and the duration of the estimated suspension in advance or, if this is not reasonably possible, without delay after ATRAIN has learned of such matter.

The Customer acknowledges that interruptions to the availability of the ATRAIN Services may also occur, for example, in the event of data connection or network disruptions or due to errors and interruptions in third-party services and products or in the Customer's own environment. ATRAIN shall in no event be liable for such interruptions and such interruptions shall not be considered Errors hereunder.

## **7.3 Changes in ATRAIN Services**

ATRAIN may under its sole discretion at any time modify and update the ATRAIN Services or a part thereof and may cease to provide the same. ATRAIN reserves the right to implement new versions of the ATRAIN Product including, but not limited to, changes that affect the design, operational method, technical specifications, systems, and other functions of the ATRAIN Product, at any time without prior notice.

## **8. Customer Support**

ATRAIN provides customer support services by email relating to Customer's use of the ATRAIN Services as agreed separately on the Order. The level of support varies depending on the subscription type to ATRAIN Services.

Support services are provided on weekdays (excluding German public holidays) during ATRAIN's ordinary office hours to the reasonable extent decided upon from time to time by ATRAIN.

Error notices and support requests must be submitted to ATRAIN's technical support by email to [digitalcenter-support@atrain.com](mailto:digitalcenter-support@atrain.com).

The Customer and the Users shall provide ATRAIN with the requisite assistance and access for providing Customer and the Users with support and Error correction services as set out hereunder.

## **9. Confidentiality**

Either Party shall not disclose to third parties any material or information received from the other Party and marked as confidential or which should be understood to be confidential, and shall not use



such material or information for any other purposes than those stated in this Agreement. Each Party shall ensure that its employees, agents, collaborators and sub-contractors are bound by the provisions of this clause.

The confidentiality obligation shall, however, not be applied to material and information, (a) which is generally available or otherwise public; or (b) which the Party has received from a third party without any obligation of confidentiality; or (c) which a Party has independently developed without using material or information received from the other Party as verified by the written records of such Party; (d) which a Party is obligated to disclose due to applicable mandatory laws, public authority regulations or court orders. In case of disclosure due to (d), the Party must promptly inform the other Party of such disclosure.

Each Party shall promptly upon termination of the Agreement or when the Party no longer needs the material or information in question for the purpose stated in the Agreement cease using confidential material and information received from the other Party and, unless the Parties separately agree on destruction of such material, return the material in question (including all copies thereof). Each Party shall, however, be entitled to retain the copies required by law or regulations.

The rights and responsibilities under this section 9 shall survive the expiry or termination of this Agreement.

## **10. Intellectual Property Rights**

Upon payment of the price of the services, the title to the Customer Data and any Results of it shall belong to the Customer. ATRAIN shall only have the right to use Customer Data for the purposes of providing the ATRAIN Services to Customer.

ATRAIN shall have the right to collect and generate anonymous technical analytics and usage data ("Analytics Data") generated through Customer's use of the ATRAIN Services. For clarity, such Analytics Data shall not be considered Customer Data and shall be proprietary to ATRAIN. For the avoidance of any doubt, such data shall not contain personal data or Customer Data.

All Intellectual Property Rights in or related to the ATRAIN Services, and thereto related documentation and all parts and copies thereof shall remain exclusively vested with and be the sole and exclusive property of ATRAIN and/or its subcontractors/licensors. For clarity, ATRAIN owns all Intellectual Property Rights in the Analytics Data generated through the use of the ATRAIN Services.

Except as expressly stated herein, this Agreement does not grant the Customer any Intellectual Property Rights in the ATRAIN Services and all rights not expressly granted hereunder are reserved by ATRAIN and/or its subcontractors/licensors.

If the parties do not otherwise agree on, shall in the event of an agreed case study or similar between Customer and ATRAIN, all Intellectual Property Rights to material produced, including but not limited to photos, quotes, interviews, videos, testimonials, under such work will belong to ATRAIN and may at its sole discretion be used by ATRAIN in the marketing of its services.

## **11. Intellectual Property Infringements**

ATRAIN agrees that, if notified promptly in writing of and given sole control of the defense and all related settlement negotiations and reasonable assistance from the Customer if necessary, it will defend the Customer against any claim that the ATRAIN Product infringes the Intellectual Property Rights of a third party.



ATRRAIN shall pay any resulting costs and damages finally settled or awarded by a court with respect to any such claims to the third party in question. At any time if ATRRAIN deems that any part of the ATRRAIN Product infringes the Intellectual Property Rights of any third party, ATRRAIN has the right at its own expense to modify/replace the ATRRAIN Product to eliminate the infringement or procure to Customer a right to use the ATRRAIN Product. If this is not reasonably possible, ATRRAIN may terminate the Agreement.

ATRRAIN shall, however, not be liable for any infringement or claim thereof in the event the claim (i) is made by any affiliates of the Customer; (ii) resulted from the Customer's or a Customer's subcontractor's/supplier's use or modification of or addition to the ATRRAIN Services or by the materials provided by Customer to ATRRAIN (such as Customer Data); (iii) is due to the use of ATRRAIN Services in conjunction with any other third-party software for which Customer has not obtained ATRRAIN's written approval; or (v) which could have been avoided by using a patch, upgrade or otherwise amended version of the ATRRAIN Services.

This section 13 contains ATRRAIN's entire liability and Customer's sole and exclusive remedy in case of Intellectual Property Rights infringements.

## **12. Limitation of liability**

(1) ATRRAIN shall be liable under the terms of this Agreement only in accordance with the provisions set out under (a) to (e):

(a) ATRRAIN shall be unrestrictedly liable for losses caused intentionally or with gross negligence by ATRRAIN, its legal representatives or senior executives and for losses caused intentionally by other assistants in performance; in respect of gross negligence of other assistants in performance ATRRAIN's liability shall be as set forth in the provisions for simple negligence in (e) below.

(b) ATRRAIN shall be unrestrictedly liable for death, personal injury or damage to health caused by the intent or negligence of ATRRAIN, its legal representatives or assistants in performance.

(c) ATRRAIN shall be liable for losses arising from the lack of any warranted characteristics up to the amount which is covered by the purpose of the warranty and which was foreseeable for ATRRAIN at the time the warranty was given.

(d) ATRRAIN shall be liable in accordance with the German Product Liability Act in the event of product liability.

(e) ATRRAIN shall be liable for losses caused by the breach of its primary obligations by ATRRAIN, its legal representatives or assistants in performance. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which Customer may rely. If ATRRAIN breaches its primary obligations through simple negligence, then its ensuing liability shall be limited to the amount which was foreseeable by ATRRAIN at the time the respective service was performed.

(2) The Customer is responsible for backing up the Customer Data on a regular basis and before submitting any Customer Data to the ATRRAIN Services. Therefore, in the event that ATRRAIN causes the loss of data, ATRRAIN shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken in accordance with this Agreement.

(3) Any more extensive liability of ATRRAIN is excluded on the merits.





(4) Insofar as the Customer becomes aware of faults or damage and fails to notify ATRAIN immediately, ATRAIN shall in accordance with section 254 German Civil Code (Bürgerliches Gesetzbuch) not be liable for such damage which could have been avoided if immediate notification had been given.

### **13. Termination**

This Agreement shall take effect as agreed in the Order. The right of termination for cause shall remain unaffected.

### **14. Miscellaneous**

#### **14.1 Notices**

Any notice or other written communication to be given by the Customer under this Agreement shall be in English or German and sent by email to the following email address: legal@atrain.com

Any notice or other written communication to be given by ATRAIN under this Agreement shall be in English or German and sent by email to the email address indicated in the Order.

If either party is to change their respective contact details, the other party shall be informed thereof in advance.

#### **14.2 Subcontractors**

ATRAIN shall be entitled to use subcontractors, including third party software suppliers, for the provision of the ATRAIN Services. ATRAIN shall be liable for the subcontractors' work and services in the same manner as for its own work and services.

#### **14.3 Export Restrictions**

The Customer agrees to comply with any export restrictions in force in any jurisdiction that may be applied to the provision of the ATRAIN Services hereunder.

#### **14.4 Entire Agreement**

This Agreement supersedes all prior agreements, arrangements, and understandings between the Parties relating to the subject matter hereof, and constitutes the entire agreement between the Parties relating to the subject matter hereof.

#### **14.5 Severance**

If any provision of this Agreement is declared by any judicial or other competent authority to be void, illegal or otherwise unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

#### **14.6 Headings**

Headings used in this Agreement are for convenience only and do not alter the meaning or interpretation of any provision herein.

#### **14.7 Assignment**

ATRRAIN shall be entitled to assign all or any of its rights or obligations hereunder in whole or part to an affiliate or successor or to a purchaser or acquirer of its business assets relating to the ATRAIN Services without the Customer's prior consent.

The Customer shall not be entitled to assign any of its rights or obligations hereunder in whole or part without the prior written consent of ATRAIN.

#### **14.8 Amendments**

ATRRAIN is entitled to amend this Agreement by providing the Customer with at least a thirty (30) days prior notice. By continuing to use ATRAIN after amendments have become effective, the Customer hereby accept the amended version and is bound to it.

If the Customer does not accept the change made by ATRAIN to this Agreement, the Customer has the right to terminate the Agreement by notifying ATRAIN thereof in writing prior to the effective date of such change. Otherwise the Customer's approval to the amendments shall be deemed to have been given.

#### **14.9 Force Majeure**

Both Parties shall be excused and shall not be responsible for any failure to comply with the terms of the Agreement due to causes beyond their control or the control of their suppliers, including but not limited to war, insurrection, riot or other civil disobedience, quarantine restriction, labour dispute except within either Party's organisation, failure or delay in transportation, accidents, flood, earthquake, fire, storm or other act of God, act of any government or any agency thereof, judicial action or act.

Where a Party's performance is prevented for a period in excess of three (3) months due to an event as stated above, either Party shall be entitled to terminate the Agreement in writing without any obligation to pay compensation.

#### **14.10 Applicable law and dispute resolution**

This Agreement shall be governed by the laws of the Federal Republic of Germany except for the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods dated 11.4.1980).

The courts for ATRAIN's registered office shall have exclusive jurisdiction over all disputes under and in connection with this Agreement, provided that Customer is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch, HGB) or if upon the commencement of legal proceedings, Customer has no place of business or ordinary residence in the Federal Republic of Germany.