

## DEFANTS PRIVACY POLICY – DECEMBER 2023

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**IMPORTANT LEGAL NOTICE TO ALL END-USERS:** CAREFULLY READ THE TERMS AND CONDITIONS OF THIS PRIVACY POLICY (“**PRIVACY POLICY**”) BEFORE ACCESSING OR USING THE SOFTWARE.

THE PRIVACY POLICY FORMS A PART OF AND SHOULD BE READ IN CONJUNCTION WITH DEFANTS’ END-USER LICENSE AGREEMENT (“**EULA**”), AVAILABLE ON DEMAND AND ON DEFANT’S WEBSITE.

THE PROTECTION OF YOUR PERSONAL DATA IS FUNDAMENTAL TO DEFANTS. IT ENSURES THE CONFIDENTIALITY AND INTEGRITY OF YOUR DATA BY IMPLEMENTING THE NECESSARY MEANS TO GUARANTEE THEIR PROTECTION, INTEGRITY, AVAILABILITY AND SECURITY.

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### 1. DEFINITIONS

All capitalized terms in the Privacy Policy that are not specifically defined herein shall have the meaning given to them in the EULA accepted by the End-User.

“**End-User**” also referred as “**you**” means any natural person authorized by an Authorized Sub-Licenser to use the Software, to whom the License is granted for its own use of the Software, and not for resale or distribution.

“**End-User Content**” means any content that the End-User uploads to or transfers in or through the Software or provides in the course of using the Software, including confidential or classified information.

“**End-User Account**” means the personal account needed to access and use the Software and the Services. To access the Software, the End-User is required to create a password and use its professional email address as login.

“**DEFANTS**” means the French company DEFANTS, as identified in footer, which publishes and makes available to End-User the Software and Services.

“**Personal Data**” means any information that directly or indirectly identifies the End-User as defined under Applicable Law (as defined below). Common examples include: name, username, email address, phone number, date of birth, postal address, etc.

“**Services**” means all the services provided by DEFANTS to the End-User, in particular in the course of using the Software (End-User Content browsing, exploitation and temporarily storage).

“**Software**” means the software product owned by DEFANTS and object of this Privacy Policy.

### 2. PURPOSE AND SCOPE

The Privacy Policy applies to DEFANTS regarding the collection and processing of your Personal Data when you access and use the Software and/or Services.

This document explains the origin and nature of the data DEFANTS collects, the reason for their collection, the way DEFANTS uses your data and your rights regarding the data in accordance with Law No.78-17 of January 6, 1978, known as the French Data Protection Act, as amended, and EU Regulation No.2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data known as “**GDPR**” and any other law or regulation applicable to protection of Personal Data (hereinafter jointly, the “**Applicable Regulations**”).

The Privacy Policy is important both to ensure that you have a positive and reliable experience when accessing and using the Software and the Services and to allow us to accurately and fully answer your queries concerning the collection and use of your Personal Data.

Finally, considering how fast web technologies are evolving, changes may be made to the Privacy Policy from time to time. We therefore recommend that you refer back to its content on a regular basis.

BY USING THE SOFTWARE AND THE SERVICES, YOU HEREBY DECLARE THAT YOU HAVE UNDERSTOOD AND UNRESERVEDLY AGREE TO THE TERMS OF THIS PRIVACY POLICY.

### 3. COLLECTION OF YOUR PERSONAL DATA

#### 3.1. How DEFANTS collect your Personal Data

To achieve the purposes listed in **Article 5. USE OF YOUR PERSONAL DATA** of the Privacy Policy, DEFANTS may create a file consisting of Personal Data sent when creating an End-User Account, filling in forms on the Software, especially in order to access and login to the Software.

You hereby acknowledge the terms and conditions applied by DEFANTS when processing your Personal Data.

You may express your prior and express consent to the collection and processing of your Personal Data by DEFANTS, when accessing and using the Software and Services, transmitting forms through the Software.

#### 3.2. What kind of Personal Data is collected

##### **Personal Data collected directly from you**

DEFANTS may collect the following Personal Data **directly from you**, when you create an End-User Account, fill in contact forms and use the Services, in particular:

- your first and last names;
- your login details (username and password);
- your e-mail address;
- your phone number.

When DEFANTS collects Personal Data through its forms, DEFANTS indicates mandatory Personal Data by a (\*) in front of the box to be completed in the form or by any other device.

It is reminded to the End-User that no Personal Data shall be uploaded through the Software, especially through the End-User Content, except Personal Data necessary to access the Software and the Services as such (e.g. IP addresses, email addresses and passwords).

In the event that DEFANTS has access to Personal Data when executing the Services (through the investigation Reports because of the End-User Content), DEFANTS will process anonymized data whenever it is possible (i.e. without the possibility of identifying or tracing the data subject). If anonymization of such Personal Data is not possible, DEFANTS will process Personal Data in accordance with the terms and conditions laid out in **Appendix 1 – DATA PROCESSOR**. Such data will be processed by DEFANTS solely and exclusively to provide the Software and Services to the End-User, reports, research, statistics, improvements to the Software and Services.

#### **Personal Data collected from authorized third parties**

DEFANTS may collect Personal Data **from authorized third parties**, such as the Authorized Sub-Licensors as described in the EULA, in particular:

- your first and last names;
- your login details (username and password);
- your e-mail address;
- your phone number.

#### **Personal Data collected indirectly**

DEFANTS may collect the following Personal Data **indirectly**, when you access and use the Software and Services, in particular:

- your IP address;
- the login details of your End-User Account;
- information about your device, hardware, and software, such as your hardware identifiers, mobile device identifiers, settings and components, version of the Software used and updates installed and the presence of required plugins;
- approximate geolocation data (derived from IP or device settings);
- browser information, including your browser type and the language preferences;
- device event information, including crash reports, requests and system activity details (e.g. whether you encountered an error using the Software or lost Internet access);

DEFANTS also may collect and store information locally on your device, using mechanisms like cookies, browser web storage (including HTML 5), and application data caches (see **Article 4. COOKIES AND SIMILAR TECHNOLOGIES**).

You hereby acknowledge that the processing of such Personal Data is required in particular for the performance of DEFANTS contractual obligations arising from the EULA.

## **4. COOKIES AND SIMILAR TECHNOLOGIES**

Browsing data is collected by installing cookies and other identifiers on your terminal (computer, tablet, smartphone, etc.) and includes in particular:

- The identifier and content of a cookie file stored by DEFANTS in your terminal;
- The IP (Internet Protocol) address of the terminal connected to the Internet;
- The date and time when your terminal was connected to an electronic communication service;
- The type of operating system used by the terminal (Windows, iOS, etc.);
- The language used on the terminal when using the browser.

DEFANTS website's cookie policy page: [www.defants.com/en/privacy-policy/](http://www.defants.com/en/privacy-policy/) describes the type of cookies or other identifiers used by DEFANTS, their purposes and how to set your preferences.

You can also configure the settings of your terminal or your Internet browser for the installation of cookies or other identifiers.

## **5. USE OF YOUR PERSONAL DATA**

### **5.1. Why DEFANTS collects your Personal Data**

In order to better understand the data processing carried out by DEFANTS, you are informed that DEFANTS may process your Personal Data for the following purposes:

#### ***The performance of processing operations for the management and execution of an agreement with an End-User:***

- Provisions of the Services agreed under the EULA;

- End-User Account administration;
- Payment transaction management;
- Accounting operations and tax obligations.

**Customer relationship management processing:**

- Your requests (e.g. request for information or quotation, in particular via the contact form);
- Provision of the Services agreed under the EULA;
- Monitoring customer relations (such as satisfaction surveys, claim management, etc.).

**Improving the End-User experience when using the Software and Services:**

- Operate, analyze, improve and develop the Software and Services;
- Management of your requests, reviews and questions regarding the Software and the Services (as well as the content/services made available through the Software);
- Identification of the End-User when using the Software and Services;
- Software use statistics processing;
- Enabling you to enjoy a number of additional services (such as receiving a newsletter, etc.);
- Identifying and solve troubleshoot problems with the Software, the End-User Account or the Services.

**To provide commercial offers or information about DEFANTS:**

- Sending commercial offers and information about DEFANTS' business or services.

**Claims management processing:**

- Claims management and after-sales service;
- Processing requests for access, rectification, opposition, deletion, erasure;
- Litigation management.

**5.2. On which legal basis DEFANTS processes your Personal Data**

DEFANTS collects and processes your Personal Data in compliance with the Applicable Regulations and only for the following legal purposes:

- When necessary for the performance of a contract or an agreement;
- When necessary to comply with DEFANTS legal obligations;
- When you have expressly consented to the processing of your Personal Data;
- Where necessary to protect DEFANTS legitimate interests.

You therefore acknowledge that DEFANTS may process Personal Data for the performance of an agreement signed between you and DEFANTS, to exercise a legitimate interest or under a legal obligation, without requiring you to express your prior consent.

**6. SHARING PERSONAL DATA**

DEFANTS does not sell your Personal Data to its partners or third-party service providers.

DEFANTS ensures the privacy of your Personal Data and restricts its distribution to the recipients listed below:

- DEFANTS staff in charge of the marketing department, sales department, technical department in charge of the deployment of the Software and Services, department in charge of customer relations, administrative departments, legal departments, departments in charge of internal inspection procedures, logistics and IT departments, as well as their line managers;
- Data processors offering sufficient guarantees as regards the security and confidentiality of Personal Data in compliance with the Applicable Regulations;
- any company controlled by DEFANTS, controlling DEFANTS or under joint control under Article L233-3 of the French Commercial Code, as well as any company in the context of a transaction involving the transfer of control of DEFANTS (acquisition of a majority shareholding, partial contribution of assets, transfer of business, merger or acquisition, without limitation);
- any jurisdiction, administration, law enforcement agencies, judicial officers who may be called upon to intervene under a judicial procedure or administrative order;
- the CNIL (French Data Protection Authority) and any other body with jurisdiction.

**7. SENDING OFFERS AND INFORMATION**

You may receive direct information from DEFANTS by e-mail or notification via the Software, regarding DEFANTS' activities or services similar to those we have provided to you in connection with the provision of our Services.

You may express your objection to any new contact at any time, free of charge, via the hypertext link contained in the e-mails sent by DEFANTS or exercise your rights in accordance with the terms of **Article 9. INFORMATION AND EXERCISING YOUR RIGHTS** below.

**8. DATA STORAGE PERIOD**

DEFANTS retains your Personal Data for as long as you use the Software in conformity with the terms and conditions of the EULA, as long as your End-User Account exists, or as long as necessary to provide you with the relevant Services under the EULA and other agreements you have entered into with DEFANTS.

For Personal Data used for information purposes or commercial prospecting, we keep them for a period of three (3) years from the end of the business relationship.

You may of course delete your End-User Account or unsubscribe from DEFANTS' mailing lists by exercising your rights as listed below.

If your End-User Account remains unused for a continuous period of two (2) years, DEFANTS will delete it and any related data, with the exception of data that we are legally required to continue storing. Deletion of your End-User Account will occur thirty (30) days after our notification to you by e-mail, if you have not logged into your End-User Account in the meantime.

You hereby acknowledge that DEFANTS only retains your Personal Data in its information system for legitimate administrative, legal and security purposes.

Storage of your data beyond the term specified in **Article 5. USE OF YOUR PERSONAL DATA** may be necessary to carry out your requests to oppose, restrict the processing operations and delete your Personal Data and to comply with any legal, accounting or fiscal obligation to store personal data (in particular for the provision of evidence) or to transfer it to the relevant authorities (administration, police services, etc.).

Throughout the Personal Data storage period, DEFANTS undertakes to maintain a high level of security and privacy of the Personal Data, to restrict access to the data only to authorized persons and not to process it for purposes other than those agreed to herein or in the applicable EULA.

## 9. INFORMATION AND EXERCISING YOUR RIGHTS

Pursuant to the Applicable Regulations and in particular to articles 15 to 22 of the GDPR, you have a right to:

- send to DEFANTS any request for information about the Privacy Policy and the processing of your Personal Data;
- access information on the processing of your Personal Data (data category, purpose, etc.);
- delete your End-User Account, rectify, update or delete any inaccurate Personal Data by contacting DEFANTS by e-mail or directly on the Software via the End-User Account settings depending on the profile used (e.g. admin and/or analysts End-User Accounts);
- restrict any processing of your Personal Data that DEFANTS undertake, if you believe the data to be inaccurate (for a limited period during which DEFANTS will check the accuracy of the data), or if you believe the processing to be unlawful (while allowing DEFANTS to continue), by sending DEFANTS an e-mail;
- receive a copy of the Personal Data you have provided directly to DEFANTS, in a structured, commonly used and device-readable format, by contacting DEFANTS by e-mail; being specified that any request for a copy beyond the first one may generate administrative processing costs that will be charged to you. You hereby acknowledge that any Personal Data that is derived, calculated or inferred by DEFANTS from the data that you have provided is excluded from the right to portability in so far as such data was not provided by you but created by DEFANTS;
- unsubscribe from DEFANTS' mailing list by clicking on the dedicated hyperlink in the information e-mail;
- decide to object to the use of automated decision-making: your right to refuse decisions entirely based on automated decision-making, including profiling, in cases where the decision may result in judicial consequences for you or may produce a similar significant effect;
- file a complaint with the Commission Nationale de l'Informatique et des Libertés, 3 Place de Fontenoy - TSA 80715 - 75334 PARIS CEDEX 07, Tel: +33 (0)1 53 73 22 22.

In the event of excessive claims, particularly of a repetitive nature, DEFANTS reserves the right not to follow up any requests for access once DEFANTS has satisfied one of your requests for access to your Personal Data.

Your requests must be submitted in writing by postal mail or by e-mail sent to the addresses shown below, be signed and enclose a photocopy of an ID document bearing the holder's signature. The request must specify the address to which the reply should be sent. DEFANTS is bound to reply within one (1) month of receiving the request. This deadline may be extended by two (2) months, in the event of a large number of particularly complex requests.

✉ : DEFANTS, 1137A Avenue des Champs Blancs, CESSON-SEVIGNE (35510)

@ : [bonjour@defants.com](mailto:bonjour@defants.com)

## 10. SECURITY AND PROTECTION OF PERSONAL DATA

Acting under its responsibility for data controller, DEFANTS implements organizational and technical security measures designed to guarantee the privacy and integrity of your Personal Data.

### **Security measures for DEFANTS' operating and administrative environment**

All Personal Data stored on DEFANTS' servers is protected by the following measures:

- dedicated network;
- access rights management;
- password policy and password lockout;
- use of antivirus and intrusion detection protection;

- firewall protecting each network zone;
- restricted number of authorized requests to prevent abnormal or improper use of the Software;
- automatic expiration of the session when using the End-User Account;

### **User environment security measures**

All Personal Data stored on DEFANTS' servers is protected by the following measures:

- hosting of Personal Data in a datacenter within the European Union;
- encrypted database;
- secure End-User Account under SSL, SSH and HTTPS protocol;
- cloud provider with numerous security certifications;
- use of antivirus software;
- access control;
- protection of hosted sensitive files from malicious direct access;
- restricted number of authorized requests to prevent abnormal or improper use of the Software;
- verification of the End-Users' e-mail address, in case of fraud or suspicious form, access can be suspended manually;
- automatic expiration of the session when using the End-User Account;

However, given the very nature of a public network such as the Internet, you hereby acknowledge and accept that the security and integrity of any Personal Data transmitted via the Internet cannot be guaranteed.

In the event of a security breach resulting in a violation of Personal Data, DEFANTS shall inform you of the nature of the breach and any likely consequences resulting from it.

DEFANTS undertake to promptly implement corrective measures and to notify the CNIL of the breach, unless the said breach is not likely to jeopardize the rights and civil liberties of natural persons, pursuant to the Applicable Regulations.

You acknowledge that your password protects your End-User Account and that it is necessary to choose a secure and unique password and to take all reasonable precautions to control or limit access to the terminals that allow access to your End-User Account (password, PIN code, logout after use, etc.).

## **11. LOCALIZATION OF PERSONAL DATA**

DEFANTS hosts and has your Personal Data hosted within the European Union.

If the processing and purposes referred to in **Article 5. USE OF YOUR PERSONAL DATA** require the transfer of Personal Data outside the European Union, DEFANTS will ensure that your Personal Data is suitably protected.

All data transfers take place with recipients located:

- in countries which, according to the criteria established by the European Commission, provide an adequate level of protection for personal data; or
- in countries where the transfer may be covered by the standard contractual clauses for data transfers between EU and non-EU countries provided by the European Commission or by binding corporate rules.

## **12. PRIVACY POLICY MODIFICATIONS**

DEFANTS may modify its Privacy Policy from time to time. DEFANTS will notify you of any significant changes by sending a message that will be displayed when you log into your End-User Account, or by e-mail sent to the address supplied when you created your End-User Account, so that you can examine the modifications before they come into effect.

You may delete your End-User Account if you object to any such modifications.

If you continue to access and use our Software and/or use the End-User Account after we have published or sent a notification relating to modifications of our Privacy Policy, you shall be deemed to have unreservedly accepted the updated Privacy Policy.

## **13. CONTACTING DEFANTS**

If you have any questions or comments about this Privacy Policy, please contact DEFANTS at: [bonjour@defants.com](mailto:bonjour@defants.com).

## **14. DATA PROCESSOR**

Under the EULA, the performance of the Services may involve one or more Personal Data processing operations on behalf of the End-User. Where applicable, the terms and conditions of such processing by DEFANTS are governed by **Appendix 1 – DATA PROCESSOR**.



**APPENDIX 1 – DATA PROCESSOR**

**1. Subject**

Without prejudice to **Article 4 of the EULA**, this **Appendix 1 "Data Processor"** (hereinafter, the "**Appendix**") sets forth the conditions under which DEFANTS may carry out Processing Operations (defined below) on behalf of the End-User for the delivery of the Services.

In the event of any discrepancy or contradiction between the provisions of the EULA and those of this Appendix, the provisions in the Appendix shall prevail, unless otherwise specified and expressly agreed in the Appendix.

**2. Definitions**

Capitalized terms in this Appendix not expressly defined herein shall have the meaning agreed upon in the EULA, the Privacy Policy, and/or as given to them by the Applicable Regulations.

**"Processing Operations"** or **"Processing"** means any operation or set of operations, whether or not carried out by means of automated processes and applied to Personal Data or sets of Personal Data, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**"Sub-processor"** means DEFANTS subcontractors as of the date of the conclusion of the EULA and any possible subcontractor commissioned by DEFANTS during the term of the End-User Account to perform all or part of the Processing Operations.

**"End-User"** means DEFANTS client who entrusts DEFANTS with the subcontracting of one or more Personal Data processing operations and acting in their capacity of Data Controller.

**3. Description of Processing Operations**

Within the framework of the EULA and the Services, DEFANTS may carry out Processing Operations on behalf of the End-User and according to the End-User's instructions.

The purposes of the Processing Operations are determined by the End-User as follow: Performance of the Services by DEFANTS (*i.e.* Digital Forensic, Threat Investigation and Incident Response), creation and temporary storage of investigating Reports, End-User Content temporary storage.

The legal basis of those Processing Operations are the EULA.

If the End-User uses the Services to process other Personal Data, for other purposes or Processing than those set out in the EULA, the End-User hereby declares that they will do so at their own risk and DEFANTS shall not be liable for any damages or consequences of any kind resulting from the End-User's failure to comply with the Applicable Regulations.

**4. Personal Data and Data Subjects**

The categories of Personal Data and Data Subjects concerned by the Processing Operations within the framework of the Services are determined solely by the End-User, on a case-by-case basis, and can concern for example: login details, connection logs, names, *etc.*

**5. End-User's obligations**

Throughout the term of the End-User Account and the performance of the Services, the End-User:

- determines the Personal Data types and categories;
- determines the purposes and means of use of the Personal Data;
- guarantees that they have carried out any formalities or procedures required by the Applicable Regulations before any communication of Personal Data (files, databases, *etc.*) to DEFANTS;
- guarantees to DEFANTS that the Personal Data will be collected fairly and lawfully and that Data Subjects will be fully informed and their consent given when such consent is required to allow DEFANTS to carry out the Processing Operations;
- declares that they will process the Personal Data used in connection with the Services on the basis of one of the legal frameworks provided for in Article 6 of the GDPR;
- undertakes to process Personal Data only for the sole purpose(s) agreed to in the EULA;
- undertakes to solely communicate to DEFANTS legal, complete, up-to-date and confirmed Personal Data;
- undertakes to document in writing any instructions regarding the performance of Processing Operations by DEFANTS;
- ensure that their files and Personal Data processing operations comply with the Applicable Regulations;
- undertake to notify DEFANTS of any information that they may become aware of, relating to the compliance of the Processing Operations with the Applicable Regulations and the exercise of Data Subjects' rights.

In any event, the End-User shall remain fully liable for the choice of the Services and will make sure that the latter have the characteristics and meet the conditions required for the performance of the planned Processing Operations in accordance with the Applicable Regulations.

**6. DEFANTS obligations**

When DEFANTS acts as a Data Processor under the EULA, it agrees to:

- process Personal Data only for the sole purpose(s) for which it is outsourced;
- process Personal Data in accordance with the End-User's instructions, unless DEFANTS considers that one of the End-User's instructions constitutes a breach of the Applicable Regulations, in which case it will immediately inform the End-User;
- guarantee the confidentiality of the Personal Data processed within the framework of the EULA;
- take any technical and organizational measures required to guarantee a level of security suited to the risk relating to the performance of the EULA;
- ensure that people authorized to process Personal Data under the EULA are committed to confidentiality or, where applicable, are subject to an appropriate legal obligation of confidentiality;
- use Sub-processor offering satisfactory guarantees in terms of security and confidentiality of Personal Data in accordance with the GDPR;
- reasonably assist the End-User in ensuring compliance with obligations regarding security, notification of Personal Data breaches, and the performance of impact

assessment, without prejudice to DEFANTS ability to charge the End-User for the performance of such assistance services, notably for any excessive, repetitive or disproportionate requests from the End-User;

- delete, at the End-User's choice and request, the Personal Data and/or return it to the End-User upon completion of the Services, subject to any provisions to the contrary in the Applicable Regulations or in the EULA;
- provide the End-User with all the information strictly necessary to demonstrate compliance with the obligations applicable to processor set forth in Article 28 of the GDPR and to allow, if necessary, the performance of audits or inspections with reasonable notice on dates previously agreed by the End-User with DEFANTS and within the conditions agreed in Section 15 below;
- provide the name and contact information of its Data Protection Officer, if it has appointed one.

Any request from the End-User that exceeds the obligations incumbent on DEFANTS under the EULA or the Applicable Regulations or that modifies the Processing instructions initially submitted to DEFANTS at the date of conclusion of the EULA, will be the subject of a specific prior estimate from DEFANTS.

## **7. Parties' joint obligations**

### **7.1. Compliance with Applicable Regulations**

The Parties undertake, in particular, with regard to their Processing Operations, to:

- carry out all the required procedures (declarations, requests for authorization, etc.), as the case may be, with the Commission Nationale de l'Informatique et des Libertés (C.N.I.L.) or any competent controlling authority;
- implement any steps and procedures for evaluating and monitoring Processing Operations required under the Applicable Regulations (keeping a register of Processing Operations, impact analysis, appointment of a Personal Data Protection Officer, etc.);
- comply with Data Subjects' rights as listed in articles 15 et seq. of the GDPR (in particular the right to information, access, rectification and deletion of data).

### **7.2. Privacy**

Each Party shall treat as strictly confidential all Personal Data collected or exchanged between them under the EULA, unless otherwise expressly agreed in the EULA.

### **7.3. Mutual information**

Each Party undertakes to inform the other Party in a timely manner of any event that may constitute a breach of security, a failure to comply with the provisions of the Applicable Regulations or a risk to Data Subjects' rights and freedoms.

In the event of changes to the Applicable Regulations subsequent to the date of conclusion of the EULA, DEFANTS and the End-User undertake to collaborate in a timely manner to agree on the changes to be made to the EULA, if any, to ensure the compliance of the Processing Operations with the changes to the Applicable Regulations.

## **8. Personal Data storage period**

### **8.1. DEFANTS commitments**

The End-User, as Data Controller, determines the Personal Data storage period.

Notwithstanding the foregoing, Personal Data is stored by DEFANTS for the period of time required to fulfill the purposes set and determined by the End-User.

The End-User hereby declares and acknowledges that DEFANTS only retains its Personal Data in its information system for legitimate administrative, legal and security purposes. Data storage beyond the period required for the performance of the agreed Processing Operations may be necessary to carry out Data Subject requests to oppose or to restrict the Processing Operations and to delete Personal Data and to comply with any legal, accounting or fiscal obligation to store Personal Data (in particular for evidential purposes) or to communicate them to the relevant authorities (*i.e.* administration, police services, *etc.*), and/or under professional duties pertaining to the Parties' activity.

### **8.2. User commitments**

The End-User undertakes to comply with the Personal Data storage periods in line with the terms of the Applicable Regulations and to entrust DEFANTS only with Personal Data for which (i) the consent of the Data Subjects is still current (where such consent is required) or (ii) the storage period has not expired.

## **9. Data Subject information, consent and rights**

### **9.1. Information and prior Data Subject consent**

When the End-User provides DEFANTS with Personal Data or uses its own solutions for the collection of Personal Data, the End-User shall provide the Data Subjects with all the information required by the Applicable Regulations and shall, if necessary, obtain their consent in the appropriate manner with respect to the agreed Processing Operations.

### **9.2. Data Subject rights**

As part of the Processing Operations, the End-User takes full responsibility for informing the Data Subjects about their rights and will be the point of contact and controller of the Data Subjects' requests.

Insofar as possible, DEFANTS undertakes to provide reasonable assistance to the End-User to help them fulfill their obligation to comply with requests to exercise Data Subjects' rights under the Applicable Regulations, namely right of access, rectification, deletion and opposition, right to limitation of processing, right to data portability, right not to be subject to an automated individual decision (including profiling).

DEFANTS shall not be liable for any infringement of the Data Subjects' rights and freedoms, resulting from any action, delay or omission attributable to the End-User which results in the obstruction or delay in the exercise of the rights of any Data Subject or of third party whose Personal Data is processed as part of the Services.

## **10. Personal Data security and confidentiality**

Throughout the duration of the End-User Account and the Personal Data storage period, DEFANTS undertakes to take all necessary technical and organizational measures in accordance with its obligations under the Applicable Regulations and reasonable practices in force, in order to guarantee a suitable level of security with respect to the risks relating to the execution of the Services, in order to adequately ensure the security and confidentiality of the Processing Operations, and in particular to prevent the Personal Data from being distorted, damaged or accessed by unauthorized third parties.

The End-User acknowledges that the steps listed in **Article 10** of the Privacy Policy satisfy the security and confidentiality obligation necessary for the compliance of the Processing Operations with the Applicable Regulations.

However, given the very nature of the public networks (Internet and telephone), the End-User acknowledges and accepts that the security and integrity of any Personal Data transmitted via these public networks cannot be guaranteed.

#### **11. Personal Data breach**

In the event of a security breach resulting in the accidental or unlawful destruction, loss, alteration, or unauthorized disclosure of Personal Data sent by the End-User as part of the Services ("**Personal Data Breach**"), DEFANTS shall notify the End-User of such Personal Data Breach at shortest possible notice after becoming aware of the fact and shall provide the End-User with a description of the nature of the Personal Data Breach, its likely consequences and the steps taken or suggested by DEFANTS to remedy the Personal Data Breach.

The End-User expressly understands and agrees that they are solely responsible for issuing any notifications to the Data Subjects or, if applicable, to the competent authority, and that, unless otherwise instructed by the End-User in writing in a timely manner, or if otherwise required by law, DEFANTS is not hereby authorized to make any such notifications on behalf of and/or for the account of the End-User.

#### **12. Personal Data recipients**

While providing the Services, DEFANTS may disclose Personal Data to the recipients listed in **Article 6. SHARING PERSONAL DATA** of the **Privacy Policy**.

#### **13. International transfers**

As part of the Services, no transfer of Personal Data outside the European Union may be made without prior instructions from the End-User.

The Personal Data are hosted within the European Union.

#### **14. Sub-processing**

The End-User hereby agrees that DEFANTS, at the date of creation of the End-User Account and at any time during the term of the End-User Account, may call upon Sub-processors acting in its name and on its behalf to assist it in the Processing Operations carried out on the End-User's behalf.

DEFANTS will select Sub-processors able to provide the same suitable guarantees regarding the implementation of

appropriate technical and organizational measures so that the outsourced Processing Operations meet the requirements of the Applicable Regulations.

DEFANTS shall enter into an agreement or any other legal deed with its Sub-processor (service agreement, terms and conditions of service, *etc.*) containing the same obligations with respect to the protection of Personal Data as those set forth herein, in particular with respect to suitable guarantees regarding the implementation of appropriate technical and organizational measures to ensure compliance with the Applicable Regulations of the Subcontracted Processing Operations.

Throughout the term of the End-User Account, DEFANTS shall inform the End-User of any planned change regarding the addition or replacement of a Sub-processor.

The End-User may object to such addition or replacement of a Sub-processor by notifying DEFANTS in writing within ten (10) days of receipt of DEFANTS notice of the addition or replacement of a Sub-processor. Should the End-User object to the appointment of a Sub-processor, DEFANTS reserves the right to terminate the EULA by written notice to the End-User without any compensation being owed to the End-User.

DEFANTS shall remain fully liable to the End-User for Processing Operations performed by the Sub-processor in violation of the obligations hereunder.

#### **15. Audit**

In accordance with the terms of Article 28 3.h) of the GDPR, upon reasonable request by the End-User, DEFANTS shall make available to the End-User the information strictly necessary to demonstrate DEFANTS compliance with its obligations under Article 28 of the GDPR.

Such audit shall be performed by the End-User or by an independent auditor, not competing with DEFANTS activities, up to a limit of one (1) audit *per* year. Such independent auditor shall be selected by the End-User and accepted by DEFANTS. Such auditor shall be professionally qualified and subject to a confidentiality agreement. The Parties acknowledge that all reports and information obtained in connection with such audit are confidential information subject to the terms of **Article 7.2 "Privacy"** hereunder.

The start date, duration and scope of the audit shall be mutually agreed by the Parties with a minimum of thirty (30) business days' notice. The audit may only be conducted during DEFANTS business hours and in a manner that does not disrupt DEFANTS business. The audit shall not include access to any systems, information, data not related to the Processing Operations performed under the Services, nor physical access to the servers on which DEFANTS software solutions are stored.

The End-User shall bear all costs incurred in connection with the audit, including but not limited to the auditor's fees, and shall reimburse DEFANTS for all expenses and costs incurred in connection with such audit, including time spent on the audit based on the average hourly rate of the contractor's staff who worked on the audit (unless otherwise quote from DEFANTS prior to the audit, as requested by the End-User).



## 16. Right to Compensation and Liability

### 16.1. Parties' responsibilities

THE RULES REGARDING THE END-USER AND DATA PROCESSOR'S RESPONSIBILITY AND OBLIGATIONS TOWARDS ONE ANOTHER AND TOWARDS THE DATA SUBJECTS ARE GOVERNED BY THE TERMS OF ARTICLE 82 OF THE GDPR.

DEFANTS SHALL ONLY BE LIABLE FOR DAMAGE CAUSED BY THE PROCESSING OPERATIONS OUTSOURCED WITHIN THE FRAMEWORK OF THE SERVICES IF IT HAS NOT COMPLIED WITH THE OBLIGATIONS PROVIDED FOR IN THE APPLICABLE REGULATIONS THAT ARE SPECIFICALLY INCUMBENT ON THE DATA PROCESSOR OR IF IT HAS ACTED OUTSIDE OF OR CONTRARY TO THE LAWFUL INSTRUCTIONS GIVEN BY THE END-USER.

THE END-USER SHALL FULLY INDEMNIFY DEFANTS FOR ANY DAMAGES OF ANY NATURE WHATSOEVER (IN PARTICULAR, COURT COSTS AND LEGAL FEES) PAID BY DEFANTS, IN THE EVENT OF A CONVICTION OR ADMINISTRATIVE MEASURE AGAINST DEFANTS,

WITHOUT PREJUDICE TO ANY OTHER LEGAL REMEDY THAT DEFANTS MAY EXERCISE AGAINST THE END-USER, IN PARTICULAR IF ANY OF THE FOLLOWING CASE SCENARIOS SHOULD OCCUR:

- FAILURE TO COMPLY WITH APPLICABLE REGULATIONS RESULTING FROM THE END-USER'S USE OF THE SERVICES THAT DOES NOT COMPLY WITH THE EULA;
- FAILURE TO COMPLY WITH THE APPLICABLE REGULATIONS, RESULTING FROM THE CONTINUED PROVISION OF SERVICES IN ACCORDANCE WITH THE END-USER'S INSTRUCTIONS, WHICH DEFANTS HAS INFORMED THE END-USER MAY BE IN BREACH OF THE APPLICABLE REGULATIONS AND/OR THE DATA SUBJECTS' RIGHTS AND FREEDOMS;
- ANY LOSS OR DAMAGE INCURRED BY THE END-USER OR BY THE DATA SUBJECTS OR BY ANY THIRD PARTY RESULTING FROM THE COMMUNICATION TO DEFANTS BY THE END-USER OF PERSONAL DATA.

### 16.2. Limitation of responsibility

DEFANTS LIABILITY IS LIMITED IN ACCORDANCE WITH THE TERMS OF **ARTICLE 7 OF THE EULA**.

[End of Document]