

**TELEFÓNICA DIGITAL IDENTITY & PRIVACY, S.L.U. END-USER AGREEMENT (“EULA”)****FOCA**

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Updated August 11, 2014

Effective September 11, 2014

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1.2 To respect to the SOFTWARE PRODUCT(S) License, you further agree that you (and procure that End Users):

- (a) shall not share with or assign, copy, sublicense, transfer, lease, rent, sell, distribute, install, or otherwise provide to any third party (except to any End User) (i) the SOFTWARE PRODUCT(S) License, (ii) the SOFTWARE PRODUCT(S); (iii) any use or application of the SOFTWARE PRODUCT(S); or (iv) your rights under this EULA shall not pledge as security or otherwise encumber, the SOFTWARE PRODUCT(S);
- (b) shall comply with any instructions from TDI&P relating to the use of the SOFTWARE PRODUCT(S);

- (c) shall (i) not use the SOFTWARE PRODUCT(S) in a manner that is inconsistent with a reasonable good faith use of the SOFTWARE PRODUCT(S), (ii) not use the SOFTWARE PRODUCT(S) in a manner which, in TDI&P'S reasonable opinion, will (or is likely to) adversely affect the SOFTWARE PRODUCT(S) or other TDI&P'S clients, (iii) not use the SOFTWARE PRODUCT(S) in a manner which may perturb, interfere, distort or damage the TDI&P's systems, (iv) not use the SOFTWARE PRODUCT(S) fraudulently or in connection with a criminal offence, (v) not use the SOFTWARE PRODUCT(S) to send, knowingly receive, store or communicate any material which is illegal, unlawful, offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax or any other type of material likely to cause offence, (vi) not use the SOFTWARE PRODUCT(S) in order to harass, spy on, pester, cause annoyance or unnecessary anxiety to any person, or to pass as someone else or act in a manner which may be reasonably deemed to be objectionable, or which is in any way harmful to third parties, (vii) not use the SOFTWARE PRODUCT(S) in a way that contravenes any license, code of practice, instructions or guidelines issued by a relevant regulatory authority, (viii) not use the SOFTWARE PRODUCT(S) to spam or to send unsolicited advertising or promotional material, (ix) not use the SOFTWARE PRODUCT(S) to send or transmit anything, content or material which consists of or contains virus software, (x) not use the SOFTWARE PRODUCT(S) in a manner which may damage the reputation of TDI&P or any entity within Telefónica Group, the reputation of the SOFTWARE PRODUCT(S) or otherwise bring TID&P into disrepute or the reputation of third parties, (xi) not use the SOFTWARE PRODUCT(S) in any manner which violates copyright, trademark, confidentiality, privacy, or which infringes the intellectual or industrial property rights of others, (xii) hold and will continue to hold any licenses, consents and/or notifications required under any applicable legislation, regulation and/or administrative order to receive and use the SOFTWARE PRODUCT(S), if any.
- (d) shall use the SOFTWARE PRODUCT(S) solely (i) for your internal use with your ordinary business or personal operations, (ii) in accordance with all applicable laws and regulations, and (iii) as provided in this EULA and any documentation forming part of the SOFTWARE PRODUCT(S);
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- (f) other than as expressly set forth in this EULA, shall not (i) modify, adapt, translate, duplicate, disassemble, decompile, reverse assemble, reverse compile, or reverse engineer, or take similar action with respect to the SOFTWARE PRODUCT(S) for any purpose, or (ii) attempt to discover the underlying source code or algorithms of the SOFTWARE PRODUCT(S) (unless enforcement is prohibited by applicable law and then, only to the extent specifically permitted by applicable law, and then only upon providing TDI&P with reasonable advance written notice and opportunity to respond);
- (g) for the purpose of designing, modifying, or developing software or services similar in purpose, scope, or function to the SOFTWARE PRODUCT(S), shall not engage in

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Due to the SOFTWARE PRODUCTS(S) being sold “as is” we may not provide support services for it.

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Upon the termination or expiration of this EULA,

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- c) you must uninstall and either return or destroy all copies of the SOFTWARE PRODUCT(S) in your possession and provide a written certification executed by you or any of your authorized representatives certifying such action.

## **5. RIGHT TO CANCEL**

In accordance with applicable law, if you are a consumer you have the right to cancel these Terms within 14 natural days at no cost by sending an e-mail to [contact@support.elevenpaths.com](mailto:contact@support.elevenpaths.com). You can use the template attached as exhibit 1. However, you agree and acknowledge that due to the very nature of this agreement, the right to cancel will not apply once performance of this agreement with the download of the SOFTWARE PRODUCT has been initiated.

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NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR RESTRICT THE LIABILITY OF EITHER PARTY FOR: (I) DEATH OR PERSONAL INJURY RESULTING FROM THAT PARTY'S NEGLIGENCE; OR (II) FRAUD OR FRAUDULENT MISREPRESENTATION.

NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR RESTRICT THE LIABILITY OF EITHER PARTY IN RESPECT OF ANY LIABILITY WHICH CANNOT BE EXCLUDED OR RESTRICTED BY LAW.

## **8. CONFIDENTIALITY**

You undertake to treat as strictly private and confidential and not to disclose to third parties any information, data, news or document in any medium relating to the SOFTWARE PRODUCT(S) which it obtains or receives as a result of entering into or performing this EULA (the "Confidential Information").

The undertaking set out in the paragraph above will not be deemed to be breached if information, news, data and/or documents are already in the public domain when disclosed or the disclosure of such information is required by law or an authority orders the total or partial disclosure of the Confidential Information.

For the purposes of this section, Confidential Information also includes these Terms, including the relevant consideration, TDI&P system, any document, business offer, order or presentation given by TDI&P to you, related to TDI&P business partners' technology, clients, business plan, promotional and marketing activities, finances and other business affairs.

The confidentiality obligations established herein shall survive termination of the EULA and shall continue until any of the exception included in this section applies.

If you are required by statute, applicable law or regulation or by legal or regulatory authority, process or proceeding to disclose any Confidential Information, you shall provide TDI&P with a reasonably adequate notice (if permitted by law, regulatory or the relevant authority) of such requirement so that TDI&P may timely seek a protective order or other appropriate remedy or waive compliance with the terms of this section. You also agree to cooperate with TDI&P in its



efforts to so obtain such a protective order or other remedy. In the event that such protective order or other remedy is not obtained, you shall permit hereunder to furnish only that portion of the Confidential Information that it is advised by opinion of counsel it is legally required to disclose and shall exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

## 9. NOTICES

### To You:

Except as otherwise set forth herein, notices made by TDI&P to you under this EULA will be provided to you via the email address provided by you to TDI&P in the registration process you followed when you acquired the SOFTWARE PRODUCT(S) or in any updated email address you provide TDI&P. It is your responsibility to keep your email address current and you will be deemed to have received any email sent to any such email address, upon TDI&P's sending of the email, whether or not you actually receive the email.

### To TDI&P:

For notices made by you to TDI&P under this Agreement and for questions regarding this EULA or the SOFTWARE PRODUCT(S), you may contact us through [contact@support.elevenpaths.com](mailto:contact@support.elevenpaths.com).

## 10. GOVERNING LAW

These Terms and the EULA shall be governed by Spanish Law.

The parties agree to submit any disagreement in the interpretation and execution of these Terms and the EULA to the courts and tribunals of the city of Madrid, , unless otherwise provided under mandatory law.

## 11. ASSIGNMENT AND SUBCONTRACTING

You may not assign these Terms and EULA or otherwise transfer any of its rights or obligations, including any credentials, the licenses or any other right, without the prior written consent of TDI&P.

TDI&P, upon prior, written notice (including by email) to you and without your consent, assign or otherwise transfer these Terms to a third party, whether a member of the Telefónica Group or not. TDI&P may at any time subcontract part or all of its obligations hereunder.

## 12. PUBLICITY

TDI&P may use your name and/or logo in a list of customers used in marketing materials provided you give your consent to TDI&P by email upon the TDI&P relevant request.



Within forty-five (45) days of signing this EULA TDI&P may publish a press release announcing the acquisition of you as a customer, provided you have the opportunity to review and approve the press release.

### 13. NON-WAIVER

The failure or delay by either party to this EULA to exercise or enforce any right, power or remedy under this EULA shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

### 14. ENTIRE AGREEMENT AND MODIFICATION

These Terms and EULA, any addendum or amendment to them, are the entire agreement for the SOFTWARE PRODUCT(S) License (including the Support Services).

We may modify this EULA at any time by publishing the new version on <https://www.elevenpaths.com/es/labstools/foca-2/index.html> at least 30 days before they become effective. The new EULA will be applicable to You upon they become effective, unless you exercise your termination right by sending an e-mail to [contact@support.elevenpaths.com](mailto:contact@support.elevenpaths.com) before they are due to become effective. Your continued use of the service signifies your acceptance of such modification. You should periodically visit the page <https://www.elevenpaths.com/es/labstools/foca-2/index.html> to review the current EULA. TDI&P may (but is not obliged to) notify such modification either by sending an e-mail to the e-mail address or a text message to the mobile number You provided when registering to the service.

## EXHIBIT 1

### TEMPLATE TO EXERCISE THE RIGHT TO CANCEL THE TERMS AND CONDITIONS OF THE FOCA TOOL

*You should only fill in this template and send it in case you wish to exercise your right to cancel the terms and conditions.*

*To the attention of:*

Telefónica Digital Identity & Privacy, S.L.U.,  
Ronda de la Comunicación, s/n (Distrito Telefónica).

Edificio Central. 28050 - Madrid

e-mail: [contact@support.elevenpaths.com](mailto:contact@support.elevenpaths.com)

The purpose of this letter is to notify my decision to exercise my right to cancel the terms and conditions accepted as of [----] related to the FOCA tool.

*Please include Your name: -----*

*Your address: -----*

*Signature (to be signed only if sent by letter)*

*Date:*

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Last updated: August 2014