TELEFÓNICA DIGITAL IDENTITY & PRIVACY, S.L.U. TERMS AND CONDITIONS (“T&C”)

Metashield Analyzer Service

IMPORTANT: PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE METASHIELD ANALYZER SERVICE.

These terms and conditions (hereinafter, the “T&C”) constitute a legal agreement between Telefónica Digital Identity & Privacy, S.L.U., a Spanish company with CIF B86362886 and corporate address at Ronda de la Comunicación, s/n (Distrito Telefónica), Edificio Central, 28050 - Madrid (referred to as “TDI&P” or “We”) and you (individually if you are agreeing to it in your own capacity, in which case You state and acknowledge that You are age of majority and entitled to contract, or that and you are giving us Your consent to allow your minor dependent to enter into these T&C; or if you are authorized to use the Service on behalf of your company or another entity, between the entity for which benefit you act (in either case, “You”, “Your”) with respect to the use by You, of the Metashield Analyzer Service (the “Metashield Service”).

By electronically accepting these T&C and/or using the Metashield Service, you completely and unequivocally agree to be bound by these T&C without modification. If you do not accept them or do not intend to be legally bound to these terms, you should not access, or otherwise use the Metashield Service.

The Metashield Service is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

1. USE OF THE METASHIELD ANALYZER SERVICE. LICENSE RESTRICTIONS

1.1 Use of the Metashield Service

By accepting these T&C, You are granted by TDI&P a limited, revocable, non-exclusive, non-transferable, non-sublicense right to use the Metashield Service solely for the purposes set forth in these Terms.

Metashield Analyzer is an online service that permits users checking whether a document has metadata or not. The service lets You upload several types of documents to be analysed and once the analysis is made, the type of metadata found (if any) is displayed on the screen. After the analysis, the document uploaded by You is deleted.

Before being able to make the benefit of the Metashield Analyzer and uploading any document to be analyzed, You will be requested to accept these T&C. The Metashield Analyzer service is provided on an “as is”, “as available” basis, and these T&C do not imply for TDI&P any obligation to update the service or to issue any version, releases or upgrades of the related software.
1.2 Service restrictions:

The Metashield Service runs on TDI&P’s proprietary and/or licensed software. With respect to the use of the Metashield Service, that includes the use of such software and any other software used in connection with the Metashield Service (the Metashield Service and the Software, together being the “Service”), You agree that You (and shall ensure that others):

(a) shall not share with or assign, copy, sublicense, transfer, lease, rent, sell, distribute, install, or otherwise provide to any third party (i) the Service license, (ii) any use or application of the Service; or (iii) your rights under these T&C;

(b) shall comply with any instructions from TDI&P relating to the use of the Service;

(c) shall not (i) use the Service in a manner that is inconsistent with a reasonable good faith use of the Software, (ii) use the Service in a manner which, in TDI&P’S opinion, will (or is likely to) adversely affect the Service or other TDI&P’S clients, (iii) use the Service in a manner which may perturb, interfere, distort or damage the TDI&P’s systems, (iv) use the Service fraudulently or in connection with a criminal offence, (v) use the Service 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) use the Service 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) use the Service in a way that contravenes any license, code of practice, instructions or guidelines issued by a relevant regulatory authority, (viii) use the Service to spam or to send unsolicited advertising or promotional material, (ix) use the Service to send or transmit anything, content or material which consists of or contains virus software, (x) use the Service in a manner which may damage the reputation of TDI&P or any entity within Telefónica Group, the reputation of the Service or otherwise bring TDI&P into disrepute or the reputation of third parties, (xi) use the Service 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 Service, if any.

(d) shall use the Service 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 these T&C and any documentation forming part of the Service;

(e) shall not use any documentation forming part of the Service except for supporting your authorized use of the Service;

(f) other than as expressly set forth in these T&C, 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 for any purpose, or (ii) attempt to discover the underlying source code or algorithms of the software (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 Service and or the software, shall not engage
in competitive analysis, benchmarking, use, evaluation or viewing of the Service, the software or create any derivatives based upon the software, whether for your internal use or for license or for resale;

(h) shall comply with applicable laws and shall not permit any party, whether acting directly or on behalf of you, to breach or violate any of these restrictions; and

(g) maintenance of copyright notices. You must not remove or alter any copyright notices on any and all copies of the Service.

2. SUPPORT SERVICES

The Metashield Service is provided on an “as is” and “as available” basis and We may (but are not obliged to) provide support services for it.

3. FEES

We will not charge You for the use of the Service. However, standard data charges may apply when You connect to the network to use the Service. These charges will depend on the agreement You have in force for Internet access and/or mobile services, depending on how You are connected.

4. USE OF THE INFORMATION FOR STATISTICAL PURPOSES

TDI&P is a company dedicated to developing security products with a new approach on how to face current and future threats. Therefore, part of TDI&P’s mission consists in analyzing market behavior. In part, this analysis uses the learning process obtained from the results of the services it provides, and generates profiles and statistics according to the service provided, such as vulnerabilities. Thus, when using this Service, you authorize TDI&P to use anonymously for statistical purposes the information it obtains about the type of metadata it finds, including, but not limited to, the preparation of anonymous, aggregated reports. The files analyzed by the Service will be eliminated after the analysis (along with the metadata it contains) and only information on the type of metadata found will be preserved.

5. TERMINATION

5.1 Termination

The right to use the Service is acquired for just one analysis. For further analysis, You will be requested to accept these T&C again. Therefore, this agreement will expire once the analysis is made and the results have been displayed on the screen.

Without prejudice of the foregoing, TDI&P may, immediately, terminate these T&C, in case You breach any of the terms and conditions. Additionally, TDI&P may terminate these T&C immediately in case of (i) TDI&P determines, in its reasonable sole discretion, that the provision of the Service to you is prohibited by applicable law or has become impractical or unfeasible for any legal or regulatory reason, (ii) TDI&P determines, in its sole discretion, that you are using the Service or are acting in such a way that the Service provided to other clients or any infrastructure related to it is or can be adversely affected or (iii) TDI&P determines, in its
reasonable sole discretion, that your use of the Services implies a security or service risk that may be subject TDI&P or third party to liability.

Upon the termination or expiration of these T&C,

a) The license to use the Service will automatically and immediately terminate; and 

b) You will immediately cease and desist from all use of the Service, including the Software in any way.

5.2 Right to cancel

In accordance with applicable law, You have the right to cancel these T&C within 14 natural days at no cost. In order to exercise such a right, You can use the template attached as exhibit 1. However, You agree and acknowledge that due to the very nature of the Metashield Service, upon We finalize performance of the Metashield Service, Your aforementioned right to cancel these T&C will have been automatically expired.

6. COPYRIGHT

All title, including but not limited to copyrights, names, trademarks, trade names, service marks or any other identifying characteristics, in and to the Service and any copies thereof are proprietary intellectual property owned by TDI&P or its suppliers.

These T&C only grant you the limited right to use the Service under the terms and restrictions specified herein. You do not, and will not, acquire any other right, title or interest in any Service, which will at all times remain the exclusive property of TDI&P or the applicable third party licensor to TDI&P.

All title and intellectual property rights in and to the content which may be accessed through use of the Service is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. These T&C grant you no rights to use such content. All rights not expressly granted are reserved by TDI&P.

You acknowledge and agree that TDI&P shall be the sole owner of any enhancements, updates, or derivatives of the software which are developed by TDI&P during and after the term of these T&C. Without limiting the foregoing, you expressly acknowledge and agree that TDI&P shall be the sole owner of any newly-developed intellectual property including but not limited to (i) newly-developed, revised, or modified source code and (ii) inventions where such are related in any way to the Service or TDI&P’s general business, regardless of whether such are developed, revised, or modified in response to your requests, suggestions, or ideas. During the term of these T&C and thereafter, you shall not assert the invalidity of the TDI&P intellectual property right over the service including any component thereof, or contest TDI&P’s right, title or interest therein and thereto, and you shall not cause, influence, or assist in any manner whatsoever, any other party to make any such assertions or contest.
7. NO WARRANTIES

TDI&P expressly disclaims any warranty for the Service. You expressly understand and agree that the use of the Service is at your sole risk. The Service is provided ‘as is’ and “as available” basis, without any express or implied warranty of any kind, including but not limited to any warranties of merchantability, no infringement, or fitness of a particular purpose, including also without warranty that the Service will meet your requirements or the use of the Service shall be uninterrupted, timely, secure or error free or that the results that may be obtained from the use of the Service will be accurate or reliable or that the quality of the Service will meet your expectations. TDI&P does not warrant or assume responsibility for the accuracy or completeness of any information, documentation, text, graphics, links or other items contained within the Service. TDI&P makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb, or other such computer program. TDI&P further expressly disclaims any warranty or representation to End Users or to any third party.

You agree to hold harmless and indemnify TDI&P and its subsidiaries, affiliates (including any entity within Telefónica Group) officers, agents, employees, advertisers or partners from and against (i) any third party claim arising from or in any way related to your use (or End User’s use) of the Service against these T&C (ii) any and all damage as a result of the violation by you of any applicable regulation and law or as a result of any other action connected with the use of the Service, or as a result of a breach of any of these Terms by You or resulting from your use of the Service, (iii) any and all claims against TDI&P made by any third parties related to any services, content or otherwise provided or sent by you (directly or through your End Users) using the Service or (iv) any and all damage to any equipment belonging to TDI&P or any other Telefónica Group company caused by your breach or your End Users’ breach of these Terms; including any liability or expense arising from all claims, losses, damages (actual or consequential), suits, judgments, litigation costs and attorneys’ fees, or every kind and nature. In such case, TDI&P will provide you with written notice of such claim, suit or action.

8. LIMITATION OF LIABILITY

IN NO EVENT SHALL TDI&P BE LIABLE FOR ANY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS, BUSINESS INTERRUPTION, OR LOST INFORMATION) ARISING OUT OF YOUR USE OF OR INABILITY TO USE THE SERVICE (, THE COST OF PROCUREMENT OR SUBSTITUTE GOODS AND SERVICES, STATEMENT OR CONDUCT OF ANY THIRD PARTY SERVICES OR PRODUCTS, EVEN IF TDI&P HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL TDI&P BE LIABLE FOR LOSS OF DATA OR FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFIT OR LOSS OF BUSINESS, WHETHER DIRECT OR INDIRECT, LOSS OR CORRUPTION OF DATA), OR FOR ANY OTHER INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES BASED IN CONTRACT, TORT OR OTHERWISE.

TDI&P SHALL HAVE NO LIABILITY WITH RESPECT TO THE CONTENT OF THE SERVICE OR ANY PART THEREOF, INCLUDING BUT NOT LIMITED TO ERRORS OR OMISSIONS CONTAINED THEREIN,
LIBEL, INFRINGEMENTS OF RIGHTS OF PUBLICITY, PRIVACY, TRADEMARK RIGHTS, BUSINESS INTERRUPTION, PERSONAL INJURY, LOSS OF PRIVACY, MORAL RIGHTS OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION.

IN ANY CASE, TDI&P MAXIMUM AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THESE T&C OR THE SERVICE SHALL BE LIMITED TO FIFTY EUROS.

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.

9. CONFIDENTIALITY AND DATA PROTECTION

You undertake to treat as strictly private and confidential and to not disclose to third parties any information, data, news or document in any medium relating to the Service which You obtain or receive as a result of entering into or performing these T&C (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 the 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 these T&C 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 We 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.

With regard to the document uploaded to be analyzed, TDI&P will store the file temporarily to the extent strictly necessary for the provision of the Service. TDI&P will apply the technical and organizational measures reasonably needed to keep the temporary file confidential and secure.
TDI&P will delete the file as soon as the Service has been performed. The service will deliver to You the metadata of the document which may include personal data. TDI&P will not process the data in any way except as needed as to temporally store the file and visualize the metadata. Our Privacy Policy https://www.elevenpaths.com/general-terms-use-privacy-policy/privacy-policy/index.html will apply to the extent TDI&P is processing Personal Data to provide the Service.

10. NOTICES

For notices made by you to TDI&P under this Agreement and for questions regarding these T&C or the Service, you may contact us through contact@support.elevenpaths.com.

11. GOVERNING LAW

These Terms & Conditions shall be governed by and construed in accordance with the Spanish law and the parties submit to the exclusive jurisdiction of the courts of Madrid city, unless otherwise provided under mandatory law.

12. ASSIGNMENT AND SUBCONTRACTING

You may not assign these Terms & Conditions 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 may 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.

13. NON-WAIVER

The failure or delay by either party to these T&C to exercise or enforce any right, power or remedy under these T&C 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

These Terms & Conditions, any addendum or amendment to them, are the entire agreement for the use of the Service.
TEMPLATE TO EXERCISE THE RIGHT TO CANCEL THE TERMS AND CONDITIONS OF THE METASHIELD ANALYZER SERVICE

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

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 Metashield Service

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

Your address: ---------------------

Signature (to be signed only if sent by letter)

Date: