**DATA PROCESSING AGREEMENT PURSUANT TO ART. 28 OF THE GDPR**

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| **1.** | **Parties** | 1. | The client is a legal entity or a natural person acting in the context of its/his/her trade, business, craft or profession ("**Client**" or "**Data Controller**"). |
| | | 2. | NextAI S.r.l., with registered office in San Vito dei Normanni (BR) in Viale Francia s.n.c., fiscal code, VAT number 02717930743, and registration with the Companies' Register of Brindisi number BR-166714 ("**NextAI**" or "**Data Processor**"). |
| **2.** | **Whereas** | 1. | The parties have entered into an agreement ("**Contract**"), under which the Client makes use of the web app called "Spoki" owned by the Data Processor, for the purpose of accessing the services provided under the Contract ("**Services**"). |
| | | 2. | The provision of such Services may require the Data Processor to process personal data of which the Client is the data controller pursuant to Article 24 of the Regulation (EU) 679/2016 on the protection of natural persons with regard to the processing of personal data ("**GDPR**"). |
| | | 3. | Pursuant to Article 28 of the GDPR, by means of this agreement ("**Agreement**"), the Client intends to appoint NextAI, which it intends to accept, as the data processor of personal data, under the terms and conditions set out below. |
| **3.** | **Execution of the Agreement** | 1. | The Agreement is signed electronically by the Data Controller, in accordance with the law and the statutes and/or internal regulations of the Data Controller, by means of the "point and click" procedure (i.e. flagging unselected box). Pursuant to articles 1341 and 1342 of the Italian Civil Code, the Data Controller specifically approves the following articles of the Agreement: Article 5.5 (limitation of liability), Article 7 (appointment of sub-processors) and Article 10.2 (venue). The Data Controller is invited to download and save a copy of this Agreement on a durable record. |

**4.    Definitions**    1.    For the purposes of this Agreement, the following terms and expressions shall have the meaning indicated in correspondence with each of them:

1. **Client Data**: the Personal Data of Data Subjects processed by the Client in the role as Data Controller, communicated to, or collected by, the Data Processor in relation to the performance of the Services;

2. **Client Processing**: Processing of the Client Data by NextAI in its role as Data Processor;

3. **Data Subjects**: natural persons whose Personal Data are processed by the Data Controller and/or by the Data Processor, including but not limited to customers, employees, collaborators of the Client and of its contacts who use the web app called "Spoki" and make use of the Services referred to in the Contract;

4. **Personal Data**: any information relating to a natural person who is directly or indirectly identified or identifiable, including but not limited to a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

5. **Processing**: any operation or set of operations which is performed on Personal Data, including but not limited to collection, organisation, structuring, storage, alteration, retrieval, consultation, use, disclosure, combination, restriction, erasure or destruction;

6. **Special Categories of Personal Data**: personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, as well as genetic data, biometric data for the purpose of uniquely identifying a natural person and data concerning health or data concerning a natural person's sex life or sexual orientation.

**5. Appointment as Data Processor**

1. Pursuant to Article 28 of the GDPR, the Client hereby appoints NextAI, which it accepts, as Data Processor of Client Processing.

2. The Data Processor collects, manages and uses the Client Data of Data Subjects to:
   1. provide the service of supplying the web app called "Spoki" to the Client and, through the latter, to the Data Subject;
   2. ensure the computer security of access and use of the web app called "Spoki" by the Client and the Data Subject.

3. The Data Processor processes the following categories of Personal Data of Data Subjects: identification data (name, surname, fiscal code), contact data (e-mail address, telephone number), residential address, images (if included in Whatsapp profiles) and Personal Data shared in Whatsapp conversations (e.g. location or market preferences) for the duration of the Contract or, at the latest, within 1 (one) year following termination of the Contract.

4. Client Processing is carried out by the Data Processor by means of the following operations: collection, processing, retrieval, alteration, use, disclosure, storage, erasure and destruction.

5. For the purposes of this appointment, the Client represents and warrants to the Data Processor, for the maximum term provided for by the applicable law, that: (i) it is legally authorized to process the Client Data by virtue of the existence of one of the conditions of lawfulness provided for by Article 6 of the GDPR, having particular attention to the rules relating to the collection of the consent of the individual Data Subjects; (ii) it takes all reasonable measures to ensure that the Data Subjects do not share through the "Spoki" web app Special Categories of Personal Data and, should this occur, to be authorised to process the Special Categories of Personal Data by virtue of the existence of one of the conditions of lawfulness provided for by Article 9 of the GDPR; and (iii) in case of transfer of the Client Data to countries outside the European Economic Area, such transfer shall be subject to one of the conditions set forth in Article 44 et seq. of the GDPR. Accordingly, the Client undertakes to indemnify and hold harmless the Data Processor against any and all claims for damages, compensation, losses or prejudicial effects that may arise, either directly or indirectly, from third party claims by reason of the breach or non-compliance of these representations and warranties.

**6. Commitments of the Data Processor**

1. In accordance with the provisions of the GDPR, for the entire duration of the Agreement, with exclusive reference to the Processing Client, the Data Processor shall be obliged to:

   1. process the Client Data only on documented instructions from the Data Controller, solely and exclusively for the purposes and according to the operating methods indicated by the latter;

   2. ensure that persons authorised to process the Client Processing have an appropriate statutory obligation of confidentiality;

   3. take all measures required under Article 32 GDPR to ensure a level of security that is appropriate to the risk to the rights and freedoms of Data Subjects, based on the probability of occurrence and the severity of the risk specific to each Processing Client, ensuring regular verification and evaluation;

   4. assist the Data Controller in determining whether a data protection impact assessment of the Client Data processed by the Data Processor pursuant to Article 35 of the GDPR is necessary and provide the Data Controller with all necessary information in the event of prior consultation with a supervisory authority required under Article 36 of the GDPR;

   5. make available to the Data Controller all information necessary to demonstrate compliance with the obligations required by this Agreement, as well as allow and contribute to the review and updating of the Client Processing system;

   6. in the event of any suspected or actual breaches of Client Data stored in the Data Controller's systems, inform the Data Controller immediately, so that the Data Controller shall communicate the incident to the competent authority within 72 hours. Where possible, in consultation with the Data Controller, the Data Processor shall do everything reasonably possible to provide all technical or organisational measures aimed at limiting the prejudicial effects on Data Subjects resulting from the breach of Client Data.

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| **7.** | **Appointment of (sub)Processor** | 1. | If for the purpose of performing the activities under the Contract it is necessary or appropriate to appoint a third party established in the EU or outside the EU ("**Third Party**") to perform one or more of the operations constituting the Client Processing (e.g. the storage and/or archiving of Client Data), in accordance with the GDPR, the Data Processor, in turn, may appoint the Third Party as (sub)processor for the activities relating to the Client Processing performed by the Third Party. |

2. In the case referred to in Article 7.1 above, the Data Processor undertakes to:

    1. enter into a written agreement with the Third Party, whereby the Third Party as (sub)processor undertakes towards the Data Processor and the Client the same obligations regarding the protection of Client Data contained in this Agreement, as well as to provide sufficient guarantees to implement appropriate technical and organisational measures to ensure the fulfilment of the obligations under this Agreement;

    2. notify the Data Controller of any change in and/or breach of relationship with the sub-processor.

3. The Data Controller acknowledges that any refusal to authorise the appointment as (sub)processor of the Third Party indicated by the Data Processor may prevent or strongly jeopardize the performance of the Services under the Contract in whole or in part. Consequently, the Client itself acknowledges that NextAI will not be liable for any non-fulfilment to perform the Services under the Contract resulting in whole or in part from the Client's unreasonable refusal or undue delay to provide the aforementioned authorisation.

4. Notwithstanding the provisions of this Article 7, by signing the Agreement the Data Controller hereby authorises the Third Party indicated in this [link] as (sub)Processor. The Data Controller hereby authorises the Data Processor to keep the list of Third Party updated and undertakes to consult the relevant link on an ongoing basis.

5. The Client acknowledges and accepts that the (sub)processors may, in turn, also appoint a Third Party to carry out one or more operations constituting the Client Processing. In this case, the provisions of Articles 7.1, 7.2 and 7.3 above shall apply.

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| **8.** | **Duration of Processing** | 1. | Unless otherwise provided, this Agreement shall have a duration equal to the duration of the Contract. |

2. As a consequence of the termination of this Agreement, for whatever reason, within 1 (one) year, the Data Processor undertakes to delete (and/or irreversibly anonymise) and/or return to the Data Controller any copy of the Client Data in its possession. This undertaking shall be without prejudice to the right of the Data Processor to retain for 10 (ten) years only the Client Data strictly necessary to fulfil legal obligations and to allow the Data Processor to ascertain, exercise and defend in court any of its rights arising directly or indirectly from the Services under the Contract.

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| **9.** | **Miscellaneous** | 1. | (*Amendments*) Any amendments to this Agreement shall be made in writing only. |

2. (*Partial invalidity*) The invalidity, even partial, of one or more of the clauses of this Agreement shall not affect the validity of the remaining clauses.

**10. Applicable law and venue**

1. The interpretation, performance and termination of this Agreement shall be governed by Italian law.

2. Any disputes arising from or in any way connected with this Agreement including its interpretation, execution and/or termination for any reason whatsoever, shall be under the exclusive jurisdiction of the Court of Brindisi, any other court having jurisdiction being excluded.