



## eTryOn - Virtual try-ons of garments enabling novel human fashion interactions

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## Ethical, legal and privacy requirements and guidelines for implementation, updated

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<b>Abstract</b>	<p>This deliverable is an updated version of the practices that will be followed by eTryOn in order to ensure that all ethical, legal and privacy requirements are adopted throughout both the implementation of the eTryOn technologies as well as the interaction with end users during the piloting phase, that were initially presented in D8.4. It provides the general guidelines for the data collection and ownership processes during the project pilots and research activities.</p> <p>This updated version includes the detailed Information Sheet and Consent Form that will be collected from users during pilots. The Privacy Policy for all eTryOn services is also added. Finally, two versions of the Terms and Conditions are provided, for the two types of end users involved: fashion designers for Designer App, and consumers and fashion influencers for DressMeUp and Magic Mirror.</p>
<b>Keywords</b>	Ethical requirements, privacy, data protection

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## List of abbreviations and Acronyms

<b>Abbreviation</b>	<b>Meaning</b>
AR	Augmented Reality
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
DPO	Data Protection Officer
EB	Ethics Board
EC	European Commission
ECHR	European Convention on Human Rights
EOPs	Equal Opportunities Policies
eIDAS	electronic IDentification, Authentication and trust Services
EU	European Union
GDPR	General Data Protection Regulation
HCI	Human-Computer Interaction
MR	Mixed Reality
PETs	Privacy Enhancing Technologies
PII	Personally Identifiable Information
PMB	Project Management Board
TFEU	Treaty on the Functioning of the European Union
UX	User Experience
VR	Virtual Reality
WHO	World Health Organization
WP	Work Package

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## **1. Executive summary**

This Deliverable (D8.5 - “Ethical, legal and privacy requirements and guidelines for implementation - updated”) is the updated version of the initial report D8.4 which presented all the necessary information regarding the human participation during the project and all the practices that eTryOn will follow in order to assure the data privacy, protection and confidentiality of the participants and their data generated throughout the project implementation and the pilots.

D8.5 includes a full version of the Consent and Information Sheet forms, including more details and expanding on the information previously provided by also adding a detailed Privacy Policy along with the Terms and Conditions for each of the two main user categories to take part in the pilots (Designers and Customers). This updated version provides a full detailed description on how the data subjects will be informed of the existence of the profiling mechanism developed in WP3, its possible consequences and how their fundamental rights will be safeguarded. These updates are included in Appendix I (Informed Consent of the Participants), Appendix II (Privacy Policy) and Appendix III-IV (Terms and Conditions of Use).

No further changes were necessary in regards to the initial description and guidelines for the data protection and privacy that were presented in D8.4, following established EU regulations and corresponding laws about user’s privacy, confidentiality and consent, while all different data types (Questionnaires, body measurements, preferences on garments etc.) collected will be automatically anonymized or at least become pseudonymous.

The initial report also analysed the various data types to be used during the pilots, taking into consideration all legal guarantees regarding data safety, confidentiality and technical security, as required by law in the individual countries and EU laws and recommendations, mainly by GDPR. In all cases the personal identity of the user’s data will be strictly protected from third parties and will only be used for testing purposes within the project. Finally, there is still not any potential indicator that eTryOn will expose participants to physical harm during the project, since it will rely on the use of approved commercial VR glasses for the first pilot and commercial mobile devices for the other two pilots.



## 2. Introduction

In an era of significant breakthroughs in the fields of Artificial Intelligence (AI), Computer Vision (CV) and interactive technologies (e.g. VR, AR, MR), several sectors of the industry have benefited from these new technological achievements by embodying them in new innovative products: from self-driving cars to cashier-less supermarkets and from VR-enabled flight simulators for training air-force personnel to the more mainstream VR-based gaming. The fashion industry has been one of the industries that have been slow in incorporating these technological advancements in their business operations, in order to enhance both the creative process of garment design and the consumer interaction with fashion items. Indeed, the available interaction pathways have changed minimally over the past decades and mostly in the direction of encapsulating the recent social media frenzy (e.g. Instagram). With eTryOn, the use of interactive technologies will become mainstream in the fashion industry, focusing on three distinct fashion experiences that target both fashion designers and consumers: i) **creative experience**: while the creative process of garment design has changed over the past years from 2D sketches to using 3D design software, the visualization capabilities are still rather limited to just fitting the garments on grayscale predefined still avatars without considering the response of the garments during movements; ii) **social experience**: while the social experience of fashion has changed with the wide adoption of platforms like Instagram, it is still limited to just uploading images of people wearing physical clothes; and iii) **shopping experience**: the online shopping experience is essentially the same whether people buy clothes or electronics (i.e. they look at a few images of the items and their specs).

Building on recent advances in the fields of AI, CV and interactive devices, eTryOn's mission is to modernize the way people create, consume and experience fashion items (clothes) by offering novel Human-Fashion-Interaction (HFI) applications that i) enhance the creative process of garment design, ii) revolutionize the way people interact with fashion in the social media, and iii) simulate the physical in-store experience for online shopping.

The vertical innovation objectives of eTryOn that will transform HFI for the three interaction experiences mentioned above can be summarized as follows: a) generation of personal photorealistic 3D avatars of the user through a self-scanning application based on mainstream devices (i.e. smartphones), b) modeling of the interaction between the 3D photorealistic avatars and 3D garments (i.e. size fitting and visualization of interactions during movements) to provide improved realism, c) emerging fashion trend detection, user profiling and garment recommendations, and d) design and development of three novel HFI applications in VR/AR. Based on the results of the aforementioned innovation objectives, we propose to transform the current HFI experiences (i.e. creative, social and shopping), efficiently tackling the needs of both the consumers and the fashion industry.

Our objective is to design new interactive applications and devices that will be tailored to the end-users' needs (i.e. fashion designers and consumers). In this direction, our plan is to gather continuous feedback from the user base, starting from the beginning of the project (through collecting the user requirements) to its end (through iterative testing as well as through the envisaged pilots demonstrating the developed technology and the system update based on the users' evaluation). It goes without saying that a huge part of the project depends on participants' data. More specifically, during the project, three different applications will be piloted with actual users in order to test each one of the applications mentioned above. Therefore, for all the envisaged interactions with users, it is crucial to present all the necessary **ethical, privacy and legal related activities**, which will be performed prior to engaging with designers and consumers. In this direction, the objective of this deliverable is to review all the related legislative framework and present guidelines on how to manage all the project generated data assuring that all ethical, privacy and legal directives are followed by the project.

### 3. Ethics handling strategy

#### 3.1 Ethics management

eTryOn will pay particular attention to any ethical issues that will arise and will address them in a professional way following established EU regulations and corresponding national laws about user privacy, confidentiality and consent. On that direction, we have foreseen the eTryOn's Ethics Board in the organizational structure (see deliverable D8.1) of our project, which will be the responsible committee to depict and face all the rising issues that refer to ethics. In detail, the adopted ethical practices are described below.

The design and development of novel interfaces as well as the logging of the user's activity and learning progress, require careful deliberation of the ethical implications that may arise. eTryOn will have a strong focus on the **ethical assessment** of (i) the **impact of the data tracking infrastructure on the end users**, (ii) the **impact of the VR/MR applications and collaboration tool interfaces on the end users**, and (iii) the **design process** itself, with the intention of validating the approaches taken to address the fashion-related issues that the project is dealing with.

Appropriate methodologies for dealing with sensitive information and ensuring privacy will be applied at all stages of the data lifecycle, including the secure cloud-based storage of the data. Varying ethical policies of all countries involved and international regulations will also be taken into account. Members of the eTryOn consortium are well aware of European data protection legislations.

#### 3.2 General ethics policy

All personal data that will become available during the project will be kept secure and unreachable by unauthorized entities. The data will be handled with appropriate confidentiality and technical security, as required by law in the individual countries and EU laws and recommendations.

A general policy on ethical conduct will be adopted by the eTryOn Consortium. Prior to the start of relevant eTryOn activities approval form responsible ethics committees will be requested in line with current regulations and guidelines and will explicitly address specifics related to the conduct of analyzing personal data, including procedures of (electronic or written) informed consent, remote data collection, user's feedback and privacy and confidentiality and cybersecurity in the data chain of the data and possible data sharing. The eTryOn activities will comply with all applicable national, EU and international legislation, regulations and conventions around the Research on Humans as depicted in the not exhaustive lists per topic below.

**Table 3-1:** List of national, EU and international legislation, regulations and conventions around Research of Humans

<p style="text-align: center;"><b>Human Rights</b></p>	<ul style="list-style-type: none"> <li>• Universal Declaration of Human Rights (1948). Articles 12 and 29</li> <li>• Universal Declaration on the human genome and human rights adopted by UNESCO (11-Nov-97) Declaration of Helsinki (WMA 2000)</li> <li>• The Charter of Fundamental Rights of the EU (pending ratification of the Lisbon treaty)</li> <li>• OHCHR: International Covenant on Civil and Political Rights, Article 7 (1976);</li> <li>• WMA: Declaration of Helsinki (2004; <a href="http://www.wma.net/en/30publications/10policies/b3/">http://www.wma.net/en/30publications/10policies/b3/</a>);</li> <li>• UNESCO: Universal Declaration on Bioethics and Human Rights (2005);</li> </ul>
<p style="text-align: center;"><b>Data protection &amp; Confidentiality</b></p>	<ul style="list-style-type: none"> <li>• General Data Protection Regulation (Regulation EU 2016/679)</li> <li>• WMA Declaration of Taipei on Ethical Considerations Regarding Health</li> <li>• eIDAS Regulation (EU 910/2014);</li> <li>• Relevant ISO norms on data security and health data management such as ISO 27001 and ISO 27002.</li> <li>• 2000/520/EC: Commission Decision of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council (Safe harbour principle)</li> <li>• Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.</li> <li>• Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 (Directive on privacy and electronic communications)</li> <li>• Data Protection Directive 95/46/EC of the European Parliament and of the Council (1995),</li> <li>• Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (1985);</li> </ul>

## **4. Interaction with human participants**

eTryOn will include human participants from various user groups, who will first define user requirements for the use case studies. These will be recruited by the end-user partners (ODLO, MLZ). End users will be recruited after obtaining their informed consent clearly stating that their responses will be used within eTryOn and only for research purposes (Section 4.3). The end-user partners will supervise their recruiting and evaluation procedure. The measurements and any other relevant content of the human participants will be anonymized for protection of the identities of the participants and compliance with EU and international regulations. Their de-identification will be based on two layers: scrambling of directly identifying information in structured data; free text parsing and tagging using dictionaries built with structured data to locate identifying data. Data de-identification will take place during the system evaluation in WP6.

Moreover, in the context of WP6 we will perform user studies and tests that include the interaction of humans with VR glasses and mobile applications. Following the best practice for ethics in Human-Computer Interaction (Ethics in HCI and Usability<sup>1</sup>), the data collected during the user evaluations will be automatically anonymized or at least become pseudonymous and used for research purposes only, not to be transmitted to third parties. In addition, any information given for community or personalization benefits will be given voluntarily. The data may include, but is not limited to, personal information about the user such as: name, date of birth, interests, scanning for clothes and, human bodies, location, preferences, images, or relations to other users. Even though the participation is voluntary and could even be anonymous, informed consent is necessary and will be sought from each individual user before her/his data is even stored. This will be accomplished by formulating acceptance terms of usage, and depending on how far-reaching data collection is, an informed consent will be requested at several levels of agreement (e.g. people may agree that eTryOn analyzes the data they create or upload on social media, but not their user interactions, because this may intrude deeper into their privacy).

### **4.1 Recruitment of human participants**

For the eTryOn pilots, designers will be recruited from ODLO's fashion design team for the 1st pilot while mobile applications will become available to the public through MLZ's application. The marketing campaign of T7.2 will act as a recruitment campaign to attract pilot users.

### **4.2 Inclusion/exclusion criteria and non-discrimination practices**

For the pilots of eTryOn we will only involve participants that are adults able to give informed consent, following the necessary procedures (Section 4.3). While our applications will be open to the public not discriminating on the users that can use them, we do not plan to involve vulnerable groups/individuals in a dedicated way, which eliminates the risk of stigmatization. Regarding gender-related aspects in the user involvement in the project pilots, men and women shall be involved in the same degree to the extent that is possible<sup>2</sup>. Great care shall be taken while collecting requirements, to implement these in such a way that all persons can work equally well with the proposed technology.

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<sup>1</sup> Laurel, Brenda & Snyder, Carolyn & Quesenbery, Whitney & Wilson, Chauncey & Molich, Rolf. (2001). Ethics in HCI. 10.1145/634067.634197.

<sup>2</sup> [http://ec.europa.eu/research/era/gender-equality-and-gender-mainstreaming\\_en.htm](http://ec.europa.eu/research/era/gender-equality-and-gender-mainstreaming_en.htm)

### 4.3 Participant's Information Sheet and Consent Form

The informed consent process is central to the ethical conduct of research. Appropriate informed consent from all participants will be obtained prior to inclusion into the eTryOn pilots. As it appears from the new guidelines on consent issued by the Article 29 Working Party, several elements are indispensable in reaching a valid consent<sup>3</sup>. First, consent should be freely given, which implies that the data subject is left with a real choice to consent. As such, it should not be bundled with non-negotiable terms and conditions nor involve detriment in case the data subject refuses to consent. Second, consent should be specific, i.e., given for a purpose well defined in advance. Third, consent must be informed and, therefore, be given after the data subject has received meaningful information about the controller identity, various purposes, types of data collected, existence of the rights granted to data subjects. All these details should be provided in clear and plain language whose wording matches the targeted audience. Finally, consent should reflect the data subject's unambiguous wishes by means of a clear affirmative act (e.g. unticked checkboxes). In eTryOn, account will be taken of all these elements when drafting and presenting a consent form. Furthermore, for each pilot case study, eTryOn will ensure that participants are aware of the right to withdraw from the experiments at any time, irrespective of whether incentives or other inducement have been offered for participation. In light of the experience of the trial or as a result of debriefing, the participant will have the right to withdraw retrospectively any consent given and to demand the destruction of their own personal data captured through the pilots. The refusal of a participant to participate or continue participating in the pilots will be always respected, while no pressure will be applied to the participants so as to ensure their participation. The participants will be withdrawn from the trials either through their own request, or through the advice of the pilot leader or Ethics Board. Upon withdrawal, all data collected from the participant will be instantly deleted. Subsequently, if necessary, the recruitment procedure will be re-initiated to select a replacement for the withdrawn participant.

In addition to classic processes, eTryOn aims to develop remote processes to obtain demonstrable participant consent as well. Participant Information Forms will be prepared according to data protection regulations. The information will be presented in a way to help the participants completely understand the relevant aspects of the study. Informed Consent and the ethical approvals will be submitted to the European Commission. An appropriate informed consent from participants has been and will be in place prior to use of their data. Informed consent will be prepared according to EU standards and written in a manner to enable laypersons to fully understand the aims of the studies, what the study procedures are, which information will be used and for what purpose. All potential participants will be informed about the relevance and the content of the study as well as about the protection of their personal rights, data management and privacy. Detailed information will be provided to the European Commission on the procedures that will be used for the participants' data (e.g. informed consent, direct/indirect incentives for participation, the risks and benefits for the participants etc.). In any case, consent will be obtained from all research participants included in the eTryOn.

We will make sure that the consents obtained from the participants will be:

- a) **Informed:** given in possession and understanding of the principal, relevant information;
- b) **Voluntary:** given freely and not as a result of coercive pressure (real or perceived);
- c) **Competent:** given by somebody able, in virtue of their age, maturity and mental stability, of making a free, considered choice.

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<sup>3</sup> Article 29 Working Party, 'Guidelines on Consent under Regulation 2016/679' (WP259).

In order to ensure the “**informed**” aspect, our research professionals will be proactive in providing accessible and non-technical information about the research to the participants, which is relevant to their decisions about whether or not to give access to their data (including the risks, benefits, alternatives and the nature and purpose of the research process). More specifically, we will ensure that the potential research participant is fully aware of, and fully understands: i) what the research is about; ii) why it is being conducted; iii) who it is being conducted for and who is funding it; iv) what the purpose of the study is and what will happen to the results; v) where the results will appear and who is likely to have access to them; vi) what will be expected of them if they agree to participate and how long their participation will take; vii) what anonymity and confidentiality mean in practice and make clear that the participant does not have to participate; viii) his/her right to withdraw from the research any time without detriment, even after having agreed to participate. Comprehension is essential and the professional needs to ensure that each participant understands what is involved in the eTryOn. This will be done in a manner that is clear to the people involved and in a manner that completely covers the information on the informed consent. In order to ensure the **voluntary** aspect, eTryOn will be sensitive to any available information about the individual situations of potential participants. Care will be taken so as to ensure that all participants are informed and that their choice about whether or not to participate is voluntary. The **competent** aspect will be ensured by asking the research participants to provide written consent (and/or physically agree in the Terms of Use). Thus, participants that are not able to give clear consent by signing the forms will do so by a person that was legally authorized to provide such consent on their behalf, or if the law of the country allows providing consent verbally. All consent forms, and alternative ways to provide informed consent, will be approved by the appointed ethical committees.

The three different pilots will take place with different end users. The first pilot will address fashion designers, the second pilot will target influencers and fashion lovers in general while the last will address fashion consumers and e-shoppers. For the designers, the informed consent will be comprised of two parts: a participant information sheet and a participant consent form. Within the participant information sheet, the following issues will be addressed where appropriate. The information will be provided in a question-answer format whereby technical and academic terms and jargon are replaced with plain language relevant to the stakeholder participating.

The **participant information sheet** will include general information regarding the project, its requirements and the overall implemented data policy.

Once a participant has been given the time to read the information sheet and ask questions or raise any concerns, the participant will be given the consent form to sign which will detail their **informed consent** for taking part in the study. The detailed Information Sheet and Consent Form is available in Appendix I.

#### **4.4 Privacy Policy and Terms of Use**

Regarding the second and the third pilots, since they aim at the general public, in terms of ethical requirements they are considered identical. For them, the participants will have to agree in the Privacy Policy and the Terms of Use right before accessing the application. In summary, the **Privacy Policy** describes the method eTryOn services collect personal data relating to users, where this data is collected from, how it is processed, who is shared with, how it is secured, and how users can enforce their legal rights for cease of processing, amendment, deletion and ratification. The **Terms and Conditions of Use** will describe the rights, obligations and restrictions as well as provisions on user protection and warranty disclaimers. The provided rules address issues such as respecting the users’ control and privacy, restrictions on content and use of the services, etc. With this approach, the specific implications (for example the conditions addressing data protection

and privacy or copyright) will become clear. The Terms of Use may include, but not limited to, the following information:

**Table 4-1:** Sample of the Term of Use for pilot 2 and 3

<b>Title</b>	<b>Example</b>
What these terms cover	This document sets out the terms of service for the use of eTryOn. To use our service, you must first have downloaded our app and accepted the end user license agreement which applies to the license of that app to you. If you do not agree to these terms, please refrain from using our app and service.
Why you should read them	Please read these terms carefully before using the app. These terms tell you who we are, what the project is about, how your data will be used, what to do if there is a problem, and other important information. If you think there is a mistake in these terms, please contact us to discuss.
Information about us and the project	Who we are, How to contact us, How we may contact you, etc.
Use of our service	To use our service, you must complete the registration process which you will be prompted to do once you have downloaded the app. Once you have registered for an account you will be able to use the services...  This service is intended solely for users who are legally capable of forming a binding contract...  We may restrict, suspend or terminate the account of any user who breaches these terms...
eTryOn's Obligations	Services, Compliance with Laws, Personnel and Performance, Documentation, Security Measures etc.
User's Obligations	User shall (a) comply with the eTryOn's acceptable Use Policy, (b) use the Services in accordance with the Agreement, etc.
Term and Termination	Participation is totally voluntary. Therefore, participants are aware of the right to withdraw from the experiments at any time, irrespective of whether incentives or other inducement have been offered for participation.
How we may use your data	Information for the scope of the project eTryOn and details regarding the research
Protection of User Personal Data	eTryOn will comply with data protection acts, directives, and opinions, both at European and at National level...
Subject's Rights	Participants have the right to access the data pertaining/related to them that is collected and processed in the context and for the purposes of the project. Participants have the right to request information, access, rectification, erasure (right to be forgotten) of their personal data or restriction of processing of personal data or to object to further processing as well as the right to lodge a complaint to the – competent- Data Protection Authority.

Limitation of Liability or Disclaimers	<p>eTryOn shall use reasonable efforts to protect personal information submitted by you in connection with the eTryOn services and shall use such information in accordance with the privacy policy.</p> <p>You acknowledge and agree that your submission of any information is at your sole risk, and to the maximum amount permitted by law, eTryOn disclaims any and all liability to you for any loss or liability relating to such information in any way.</p>
Entire Agreement	<p>From time to time, we may implement additional terms and conditions applicable to specific areas or services of eTryOn or to particular content or transactions. These Terms of Use, the other documents referenced in these Terms of Use and such additional terms and conditions constitute the entire agreement between us and you regarding eTryOn and its content and services. They supersede and replace all prior agreements between you and us regarding the same subject matter.</p>
Assignment	<p>You may not assign or transfer these Terms of Use, by operation of law or otherwise, without our prior written consent. Any attempt to assign or transfer without our consent will be null and of no effect. We may freely assign this agreement.</p>
Modifications	<p>We reserve the right, at our discretion, to modify eTryOn and any services provided on it or to modify these Terms of Use, at any time and without prior notice. We will notify you of any material changes to these Terms of Use by posting the new Terms of Use and a redline of the changes on our website. By continuing to access or use eTryOn after we have posted a modification, you are indicating that you agree to be bound by the modified Terms of Use. If the modified Terms of Use are not acceptable to you, your only recourse is to cease visiting and using eTryOn.</p>
Other important terms	<p>Which laws apply to these terms and where you may bring legal processing</p>

Two versions of the Terms and Conditions are provided, for the two types of end users involved: fashion designers for Designer App, and consumers and fashion influencers for DressMeUp and Magic Mirror.

The detailed Privacy Policy is available on Appendix II, while the two versions of the Terms and Conditions of use – one for designers and one for consumers and fashion lovers are included in Appendix II and IV respectively.

#### 4.5 Ethical approvals guidelines

**Local and national ethics committees** – For all studies that involve humans, approval of the local and national ethics committees will be sought. A portfolio of all relevant



documents such as ethical approvals, informed consent forms, information sheets, and policy documents concerning personal data, handling of incidental findings, transfer of data and material etc. will be compiled and submitted to the relevant research ethics committees for approval. If needed, raising issues will be discussed with the Ethics Advisor (WP8 – T8.4). Any ethical issues arising from these discussions will be taken up by the partners.

All supporting documents presented in Appendix I-IV are aligned with all relevant EU legislation regarding data policy and protection.

#### **4.6 Data protection officer**

The DPO of eTryOn (Stella Papastergiou from CERTH), whose contact details will be shared to all data subjects that will be involved in the research according to Article 13 of GDPR, will act as the data manager officer of the project to ensure that data processing actions within eTryOn are in line with the law. CERTH, as the beneficiary responsible for data management, will cooperate with technical and pilot partners to draft a detailed data management plan that will clearly identify how each dataset used or created by the project will be handled. CERTH will be responsible for closely monitoring the execution of the data management plan and ensuring that project partners handle project datasets appropriately.

## 5. Personal data protection

During the pilots of eTryOn (WP6), we will collect information about our participants that have to do with their profile, needs and abilities in what refers to their interaction with the virtual environments when carrying out the scenarios. In addition, the data may include, but is not limited to, personal information about the user such as: name, date of birth, interests, location or relations to other users. We only collect personally identifiable information if it is necessary for improving the user experience.

The concepts of 'controller' (Article 4(7) of the GDPR defines the controller as '*the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data*') and 'processor' (according to Article 4(8) GDPR, a **processor** is the '*natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller*') play a **crucial role** in this part. Not only does the former allocate responsibility for compliance with data protection rules, but it also provides indications as to the applicable national law, the exercise of data subject's rights and the powers of national supervisory authorities.<sup>4</sup> On the other hand, the GDPR imposes specific rules on the latter in the context of confidentiality and security of the processing. Both these notions have been substantiated by the Working Party in a dedicated opinion<sup>5</sup>. In practice, the applications of these concepts to sophisticated situations involving numerous actors in the data processing chain have been proven more and more complex. However, qualifying the role of each player will be the very first step toward effective compliance. The data controller in our case will be CERTH and the data processor will be all the technical partners of the consortium (CERTH, QC, Metail and MLZ). In handling these data, we will make sure to comply with national and EU legislation, as well as follow the best practice for ethics in Human-Computer Interaction (Ethics in HCI and Usability).

### 5.1 Data protection directives

**Data protection** deals with '*personal data*', a notion defined by Article 2a of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and Article 4(1) GDPR as '*any information relating to an identified or identifiable natural person*'.

Although the qualification of the data at stake as 'personal' under the GDPR is paramount, attention should also be paid to the other elements circumscribing the applicability of the Regulation, whence the relevance of examining the GDPR's **material, personal and territorial** scope of application.

As stated in Article 2(1) GDPR, the Regulation applies to '*the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system*'. Two notions therefore trigger the material applicability of the GDPR: the existence of a **processing of personal data**.

According to Article 4(2) GDPR, **processing** means '*any operation or set of operation which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission,*

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<sup>4</sup> See on that importance to qualify the various actors as soon as possible : Christina Tikkinen-Piri, Anna Rohunen and Jouni Markkula, 'EU General Data Protection Regulation: Changes and Implications for Personal Data Collecting Companies' [2017] Computer Law & Security Review 8–9 <<http://linkinghub.elsevier.com/retrieve/pii/S0267364917301966>> accessed 10 July 2017.

<sup>5</sup> Article 29 Working Party, 'Opinion 1/2010 on the concepts of controller and processor' (WP169)

*dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction*'. Basically, it encompasses everything that can be done with data, from their original collection to their definitive erasure. Given the functioning of the eTryOn project, there is no doubt that data will be collected, stored, pseudonymized, analyzed, aggregated, compared, visualized and used to extract relevant information to assist in the decisions regarding the implementation of the three pilots. In that sense, the intrinsic goal of the project is the 'processing' of data. Therefore, the first condition for the material application of the GDPR is very likely to be fulfilled.

For the processing of data to fall within the GDPR's scope of application, those must be 'personal'. **Article 4(1) GDPR** defines 'personal data' as '*any information relating to an identified or identifiable natural person ('data subject')*'. It further adds that '*an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as 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*'. However, it is of utmost importance, the Working Party recalls, that the scope of data protection rules is not overstretched at the risk of ending up applying data protection rules to situations which were not intended to be covered by those rules and for which they were not designed by the legislator. The opinion then suggests breaking this definition down in four building blocks, each of them being analyzed in detail below<sup>6</sup>.

First, the notion of personal data encompasses '**any information**'. Now the Working Party does not define what 'information' is, but rather focuses on what kind of information would fall under the very wide notion of personal data.<sup>7</sup> As such, it recalls that, to be considered personal data, the *nature* of the information has no relevance. In other words, any kind of statement about a person, whether objective (e.g. the presence of a certain substance in one's blood) or subjective (e.g. behavior of a customer when dealing with a call center), true or not proven, may be considered as personal data. In the same vein, the *content* of the information does not matter, which means that the concept is not limited to information that refers to an individual's private and family life but also encompasses information on whatever types of activity are undertaken by him or her (e.g. information concerning a person's working relations or his/her economic and social behavior).<sup>8</sup> Finally, information may be considered as personal regardless of the *format or medium* in which that information is contained (e.g. data kept on paper or stored in a computer memory by means of binary code or on videotape).<sup>9</sup> This very broad approach to information leaves, as noted by Purtova, the concept of personal data wide open to encompass vast amounts of data.<sup>10</sup> This has also been echoed in the Nowak case<sup>11</sup>.

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<sup>6</sup> For streamlined information on the notion of personal data under the GDPR, see a.o.: Eduardo Ustaran, *European Data Protection Law and Practice* (IAPP 2018) 60–64.

<sup>7</sup> For an in-depth analysis of the notion of 'information', see: Nadezhda Purtova, 'The Law of Everything. Broad Concept of Personal Data and Future of EU Data Protection Law' 8–12.

<sup>8</sup> Private and family life, home and communications/correspondence is, as explained in the previous section, rather the scope of application of the fundamental right to privacy as stated in Article 8 ECHR and Article 7 CFREU. This notion has also been interpreted very widely. See: ECtHR, *Amann v. Switzerland*, n. 27798/95, ECHR 2000-II, para. 65. In that sense, personal data might also fall under the scope of the right to privacy. It is, however, not necessarily the case.

<sup>9</sup> In that sense, Recital 15 GDPR underlines that '*the protection of natural persons should be technologically neutral and should not depend on the techniques used*'.

<sup>10</sup> As illustrated by Purtova (n 7) 10.

<sup>11</sup> CJEU, *Peter Nowak v. Data Protection Commissioner*, case C-434/16, para. 46.

Second, the information must '**relate to**' an individual. The Working Party considers that is the case when the information at stake is *about* that individual. In other words, one must assess the relationship between a specific piece of information and a person. In many instances, this link appears self-evident (e.g. employee's personal file kept by the HR department). In others, and when the information relates to objects, processes or events, this is not so striking (e.g. the value of a house which, while being about a material good rather than a person, still conveys meaningful information about its owner's wealth).<sup>12</sup>

Third, the information must relate to an '**identified or identifiable**' person. According to the Working Party, an individual is *identified* when, within a group of persons, he or she is distinguished from all other members of the group. On the other hand, *identifiable* means that, although the person has not been identified yet, it is possible to do so. The Working Party also differentiates between *directly* and *indirectly* identified or identifiable. While in the former case reference is made to a name (in combination with additional information if the name is not unique), the latter ties back to the so-called 'unique combination' phenomenon that allows the singling out of the person on the basis of multiple pieces of information, whether retained by the controller or not.

Finally, the information must relate to a '**natural person**'. In other words, personal data must be about living individuals. The cases of the *dead* and the *unborn* are therefore particularly interesting. The *former* are not covered by the notion of a natural person. This does not mean, however, that information relating to a dead person will always fall outside the definition of personal data. This would not be the case, for instance, when data about a deceased person also provides information on a living one (e.g. hereditary medical condition).

On the basis of Article 16(2) TFEU, the European Parliament, the European Commission and the European Council recently approved the **Regulation 2016/679** on the protection of individuals with regard to the processing of personal data and on the free movement of such data (GDPR)<sup>13</sup>, which replaced **Directive 95/46**<sup>14</sup> as of the 25<sup>th</sup> of May 2018. The GDPR represents the core element of the so-called Data Protection Reform package, aiming at modernizing the legislative framework so as to allow both businesses and citizens to seize the opportunities of the Digital Single Market.

Crucial here is the **shift from a Directive** – which requires transposition into national legislation – **to a Regulation** – which is directly applicable in Member States' legal order.<sup>15</sup> In that sense, the Regulation clearly recalls that the still-into-force Directive 95/46 '*has not prevented fragmentation in the implementation of data protection across the Union*'. It then underlines that '*effective protection of personal data requires the strengthening and the setting out in detail of the rights of data subjects and the obligations of those who process and determine the processing of personal data*'.<sup>16</sup> However, it should be noted that Member States still benefit from a wide margin of appreciation when it comes to

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<sup>12</sup> In that specific context, the Working Party underlines that data protection rules wouldn't apply to such information when it is used solely to illustrate the level of real estate prices in a certain area.

<sup>13</sup> Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] O.J.E.U., L119/1. The Regulation will only apply as of the 25<sup>th</sup> of May 2018.

<sup>14</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data [1995] O.J.E.U., L281/31. This instrument will remain applicable until the 24 May 2018.

<sup>15</sup> See on that specific point and its implications: Henri De Waele, 'Implications of Replacing the Data Protection Directive with a Regulation - a Legal Perspective' (2016) 12 Privacy & Data Protection 3.

<sup>16</sup> Recitals 9 and 11 of the GDPR, respectively.

complement, particularize or even diverge from the rules laid down in the GDPR. This is for example the case for the age threshold governing child's consent, the exceptions to some of the data subject's rights, the provisions dealing with the data protection officer and the rules on transfers.<sup>17</sup> However, the core principles remain pristine. All in all, the GDPR reinforces the regulatory framework introduced by the Directive. While relying on the same concepts and definitions, it complements them with welcome additions and expands the previous regime with regard to its territorial scope, the responsibilities and obligations of the controllers and processors and the powers and duties of the national supervisory authorities. Among other novelties, it now introduces a risk-based and accountability approach allowing controllers to tailor the extent of their compliance duty to the threats caused by their processing activities.<sup>18</sup> Finally, the enforcement of the rules has been paired with drastically increased administrative fines, new criminal penalties and more effective judicial remedies.

Regarding eTryOn's data protection strategy, any data collected for user or context modelling will be strictly anonymous. In all cases the personal identity of the data will be strictly protected from third parties and will only be used for testing purposes within the project. eTryOn will comply with data protection acts, directives, and opinions, both at European and at National level.

These include:

- The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) is a regulation by which the European Parliament, the European Council and the European Commission intend to strengthen and unify data protection for individuals within the European Union (EU). The primary objectives of the GDPR are to give citizens back the control of their personal data and to simplify the regulatory environment for international business by unifying the regulation within the EU.
- Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- The Charter of Fundamental Rights of the EU, specifically the article concerning the protection of personal data.
- The opinions of the European Group on Ethics in Science and New Technologies in their report "Citizens Rights and New Technologies: A European Challenge" on the Charter on Fundamental Rights related to technological innovation.
- In particular recommendations related to ICT concerning data protection and individual's freedom and autonomy.

As far as the data becoming available to the consortium by external sources, formal consent is also necessary and will be sought from the data owner before this data becomes part of eTryOn's platform. The research in eTryOn will involve the collection of "Personal Data" including "Sensitive Data", in line with the new **General Data Protection Regulation (GDPR)**.

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<sup>17</sup> On that point, see Winfried Veil's map on the opening clauses in the GDPR <<https://www.flickr.com/photos/winfried-veil/24134840885/in/dateposted/>> accessed 1 November 2017.

<sup>18</sup> Stefano Varotto and James Colin, 'The European General Data Protection Regulation and Its Potential Impact on Businesses: Some Critical Notes on the Strengthened Regime of Accountability and the New Sanctions' (2015) 20 Communication Law 78.

In any case, GDPR will play a significant role by providing a legal basis on which grounding the processing of one's personal data and establishing balancing mechanisms whose implementation are left up to controllers. Ultimately, one should recall that the GDPR aims at protecting data subjects' fundamental rights with regard to the processing of their personal data and, as such, acts as an enabling instrument aiming for the overall respect of these rights and freedoms<sup>19</sup>.

## 5.2 Types of data collected by eTryOn

All of the data collected and processed within eTryOn is relevant and limited to the purposes of the research project (in accordance with the 'data minimization' principle). Follows from Art. 5(1)c GDPR. This essentially calls for a necessity and a proportionality test. When it comes to the former, controllers should make sure that they only process personal data that are suitable and reasonable to accomplish the purposes specified according to the purpose limitation principle. In other words, controllers should assess whether these purposes could be achieved with either less data or with properly anonymised data sets. As to the latter, it requires controllers to tailor the amount of data collected, as well as their retention period, to the identified purposes.

Therefore, the following data will be collected during eTryOn and for the following reasons:

- Demographic details including: age, gender, etc. (WP3, WP6)
- Preferences on garments and designs for user profiling and proving the users with garment recommendations (WP3)
- Data from questionnaires for gathering requirements in the eTryOn design and evaluating the applications (WP6)
- User body measurements and visual data (i.e. scanning of faces/bodies for photorealistic avatars) will be used for creating photorealistic personal avatars (WP1) and fitting garments on them (WP2), while the user will have full control over them through the eTryOn applications (WP5).

Sensitive personal data will not be collected during eTryOn (by sensitive the following types of data are considered; personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs; trade-union membership; genetic data, biometric data processed solely to identify a human being; health-related data; data concerning a person's sex life or sexual orientation).

The use of other types of data is also dependent on the design of the eTryOn. Relevant policies will be adopted if for example more personal information is collected (e.g., the purpose for which access to the data is requested, whether secondary analysis of data will be performed). Data consumers will be allowed to use the data for performing the desired application features (e.g. fitting, getting garment recommendations) provided from the eTryOn applications.

## 5.3 Data collection storage, transmission and security principles

In order to be aligned with EU data privacy laws and regulations, within WP8 appropriate privacy-preserving mechanisms dealing with sensitive personal information will be applied to ensure data privacy and prevent privacy-related leakages when collecting and processing personal data (T8.4). The Ethical Advisory Board will be consulted throughout

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<sup>19</sup> See on that point Rec. 4 GDPR: '*This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity*'. Therefore the GDPR does not solely enable privacy and data protection.

the project and relevant reports will be submitted to ensure compliance with each country's ethical standards, as well as the latest European legislation.

In eTryOn, the appropriate data interfaces for enabling integration with existing data repositories are implemented. On top of these, appropriate mechanisms will be developed to ensure data privacy and users' de-identification when querying databases or sharing anonymized records. In order to tackle the ethical issues deriving from the whole WP8, the eTryOn consortium will reinforce the proposed solution with means of data anonymization and de-identification that will take place in WP8 (T8.4) "Ethical, legal and privacy requirements and guidelines for implementation". Additively, the eTryOn consortium has established a legal, ethical and privacy framework and Data Protection Framework dealing with the privacy protection and security for accessing and communication of personal data while verifying compliance of services to European legislation (e.g. General Data Protection Regulation (EU 2016/679) and EC Directive 46/95 on data protection) and to the corresponding specific national legislation. It should be noted that the consortium will follow the latest developments concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data. Therefore, anonymization is crucial not only for coordination of data analyses across researchers, but also so that data preparation meets the guidelines binding different researchers and authorities. To support secondary analysis, eTryOn will develop an EU-compliant data protection framework in order to efficiently tackle privacy and data protection issues in data analytics and simulation activities. This framework will guarantee users' high standards of data and privacy protection and will foresee specific rules for sharing and reusing heterogeneous data between participants, data providers and researchers.

The project is designed to support the secure transport of information between consortium members – data providers, and this gives rise to scenarios in which the ethical handling of personal data will be required. Each of these is examined below and the implications for ensuring ethical treatment within a framework of information governance are considered. Therefore, inspired by the EC Co-ordination Action 'STEP' (FP6 IST-027642), which presents a survey of legal and ethical issues for the Virtual Physiological Community, we examine the same checklist of the STEP findings for eTryOn:

**Table 5-1:** Survey of legal and ethical issues for the Virtual Physiological Community

Topic	Description	eTryOn
Informed consent for research	As a fundamental principle, individuals should be fully informed about the use to which their data will be put, and the protocols under which it will be collected and handled. Consent should be obtained before use in all cases.	Fully compliant. Data used during the project will be fully consented
Privacy, protection data	All data collected from humans, whether ab initio or from existing databases, must comply with the requirements of applicable data protection law.	Fully compliant. All partners conform to applicable data protection regulations
Duty to inform, and the right 'not to know'	Research subjects may prefer not to know incidental findings from research projects, and there are ethical issues concerning the transfer of untested findings to subjects generally unable to assess their quality	Not applicable. No medical research findings to communicate

### 5.3.1 General Principles for handling and protection of human data in eTryOn

In order to ensure safety, the available data will be automatically anonymized or at least become pseudonymous and will not be transmitted to third parties. Article 4(5) GDPR defines **pseudonymization** as *'the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organizational measures to ensure that the personal data are not attributed to an identified or identifiable natural person'*. The latest anonymization techniques will be followed while data quality estimation will also be performed to guarantee the consistency and reliability of the information. Only data that are of relevance for the proposed research will be collected, no excess data will be stored. Data will only be processed for eTryOn research purposes.

Moreover, the protection of personal data will also be ensured through procedures and appropriate technologies, like the use of HTTPS protocol for the encryption of all internet transactions and appropriate European and Internet security standards from ISO, ITU, W3C, IETF and ETSI. To assure participant's privacy, all data will be anonymized, encrypted and stored on a server to which only the relevant staff have access. More specifically the server onto which the data will be stored will have server-side encryption. That means that the server's administration personnel will be able to generate public keys for specific personnel who will have access to the data but will not be able to access the data themselves (since the private keys required for this access will be generated on the machine of the person with access to the data). This means that only the required personnel will have access to the data and even in the remote case of a possible data leak or server hack the data stolen will be fully encrypted and thus fully non-accessible.

In general, the GDPR fine-tunes, complements and explicitly names the **various principles** that were already introduced by the Convention 108 and the Directive 95/46, namely (a) lawfulness, fairness and transparency, (b) purpose limitation, (c) data minimization, (d) accuracy, (e) storage limitation, (f) integrity and confidentiality and (g) accountability. For that reason, personal data collected in eTryOn will be processed in compliance with relevant legislation and guidance, and applicable international, EU and national law, specifically the General Data Protection Regulation No 2016/679 and ISO norms 27001, ISO 27002, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995) and national legislation, which includes:

In general terms the appropriate data protection principles will be observed, including:

- Data are fairly and lawfully processed;
- Data are used only in ways that are compatible with the original consent;
- The amount of data collected is relevant and not excessive;
- All reasonable efforts are taken to ensure data accuracy;
- The data are used in accordance with the rights of the study participant;
- The data are stored securely;
- The relevant international and national guidance will be followed.
- Compliance with the original study consent for which data were collected;
- Personally Identifiable Information (PII) is adequately protected;
- Ensure that anonymization/de-identification is conducted appropriately;
- Ethical review is completed as required;



Moreover, special procedures are developed on how participants can log in and give consent according to at least the assurance level 'substantial' according to the eIDAS Regulation and how a trial ID (pseudonym) of the participant can be generated under which data and possible samples will be collected and transferred to the eTryOn database. Special attention will be given to the cyber security issues and especially when that involves the use of mobile devices. Data management and data sharing is a key issue in the eTryOn project. Data handling is based on the Guidelines for Data Management in the Horizon 2020 program. In addition, eTryOn's data management plan provides detailed information on procedures which can be implemented for data collection, storage, disclosure, protection, verification, modification, transfer and deletion in eTryOn by the consortium, presenting all details on how the research and organizational data of the consortium will be stored, handled, shared and protected.

### 5.3.2 Privacy, confidentiality, anonymity and security

Privacy and data protection (discussed in the previous sections) are often confused and the relation between these two rights is considered to be complicated. Hence, the necessity to highlight the similarities and differences between these two notions before delving into the relevant regulatory frameworks.

Regarding their similarities, Privacy and data protection are both **fundamental rights**. While the former is protected under Article 8 of the European Convention on Human Rights (ECHR)<sup>20</sup> and Article 7 of the Charter of Fundamental Rights of the European Union (CFREU)<sup>21</sup>, the latter has no direct counterpart in the ECHR but is enshrined in Article 8 of the CFREU. Two systems therefore ensure the protection of privacy and data protection in Europe<sup>22</sup>.

Any interference with a fundamental right requires justification. This implies answering a twofold question: 1) is there any interference with one's right to privacy or data protection and, in case there is, 2) is the interference justified. As far as the **first question** is concerned, the ECtHR has already acknowledged that the collection, storage or disclosure of information relating to private life interferes with the right to privacy.<sup>23</sup> On the other hand, the CJEU has stated that, in establishing the existence of an interference with the fundamental right to respect for private life, *'it does not matter whether the information is sensitive or whether the person concerned have been inconvenienced in any way'*.<sup>24</sup> In other words, the processing of data about individuals is likely to interfere with their right to privacy and data protection and, as such, might require justification. When it comes to permissible interferences with the right to data protection, Article 8(2) CFREU adds an important precision: data must be processed *'fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law'*. In such cases, there is no interference with the right to data protection.<sup>25</sup> However, the collection, use and storage of these data might still interfere with the right to privacy and therefore require justification under Article 8 ECHR and 7 CFREU.<sup>26</sup>

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<sup>20</sup> Council of Europe, Convention for the Protection of Human Rights and fundamental Freedoms, signed in Rome, 4 November 1950.

<sup>21</sup> Charter of Fundamental Rights of the European Union, *O.J.E.U.*, 18 December 2000, C 364/01.

<sup>22</sup> Juliane Kokott and Christoph Sobotta, 'The Distinction between Privacy and Data Protection in the Jurisprudence of the CJEU and the ECtHR' (2013) 3 *International Data Privacy Law* 222, 222.

<sup>23</sup> ECtHR, *Amann v. Switzerland*, n. 27798/95, ECHR 2000-II, para. 65, 69, 80; ECtHR, *Rotaru v. Romania*, n. 28341/95, ECHR 2000-V, para. 46; ECtHR, *Leander v. Sweden*, n. 9248/81, para. 48.

<sup>24</sup> CJEU, *Österreichischer Rundfunk and Others*, case C-465/00, C-138/01 and C-139/01, para. 75; CJEU, *Digital Rights Ireland*, joined cases C-293/12 and C-594/12, para. 33.

<sup>25</sup> CJEU, *Volker und Markus Schecke and Eifert*, joined cases C-92/09 and C-93/09, para. 49

<sup>26</sup> Kokott and Sobotta (n 23) 226.

Regarding the **second question**, Article 8(2) ECHR and Article 52(1) CFREU detail the conditions under which an interference with the right to privacy and data protection may be justified. According to these provisions – that introduce the so-called three-step test – any interference with the fundamental rights guaranteed must 1) be in accordance with the law, 2) pursue one or more of the exhaustively cited legitimate interests and, finally, 3) be necessary in a democratic society.<sup>27</sup> Additionally, Article 52(1) recalls the general principle of proportionality, which requires that *‘the content and form of Union action shall not exceed what is necessary to achieve the objectives of the treaties’*.<sup>28</sup>

Privacy and data protection do, however, differ by their scope. As it appears from Article 8 ECHR and Article 7 CFREU, **privacy** is concerned with *‘private and family life, home and correspondence/communications’*.<sup>29</sup> On the other hand, **data protection**, as discussed in the previous section, deals with *‘personal data’*, a notion defined by Article 2a of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and Article 4(1) GDPR as *‘any information relating to an identified or identifiable natural person’*. Although these concepts appear similar, they don’t always overlap.

**Table 5-2:** Privacy and data protection from a Fundamental Right perspective

		Privacy	Data Protection
<b>Legal basis</b>	Council of Europe	Art. 8 ECHR	Art. 8 ECHR (derivative) Convention 108
	EU	Art. 7 CFREU	Art. 8 CFREU
<b>Scope</b>	Council of Europe	Private and family life, home and correspondence	Personal data
	EU	Private and family life, home and communications	Personal data
<b>Interference</b>	Council of Europe	Justification under Art. 8(2) ECHR	Justification under Art. 8(2) ECHR (derivative)
	EU	Justification under Art. 52(1) CFREU	No interference if conditions of Art. 8(2) CFREU are met

<sup>27</sup> These conditions stem from Art. 8(2) ECHR. Art. 52(1) CFREU, while being phrased differently, prescribe a very similar test. As such, *‘any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others’*.

<sup>28</sup> Art. 5(3) of the Treaty establishing the European Union, *O.J.U.E.*, 26 October 2012, C326, pp.13-390. See also these cases on the proportionality requirement: CJEU, *Afton Chemical*, case C-343/09, para. 45; CJEU, *Volker und Markus Schecke and Eifert*, joined cases C-92/09 and C-93/09, para. 74; CJEU, *Nelson and Others*, joined case C-581/10 and C-626/10, para. 71; CJEU, *Sky Österreich*, case C-283-11, para. 50; CJEU, *Schaible*, case C-101/12, para. 29.

<sup>29</sup> European Court of Human Rights, ‘Guide on Article 8 of the European Convention on Human Rights’ <[https://www.echr.coe.int/Documents/Guide\\_Art\\_8\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf)> accessed 14 March 2018.

			Justification under Art. 52(1) CFREU
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To deal with the ethical issues about personal data that may arise, the eTryOn consortium I taking into consideration the Code of Conduct for User Experience (UX) Professionals<sup>30</sup> and especially paragraph 6, according to which, privacy, confidentiality and anonymity shall be respected in any relevant study. Paragraph 6 states that:

- UX practitioners shall not reveal information that identifies colleagues or participants without their permission and shall take reasonable precautions to avoid such information from being disclosed unintentionally;
- UX practitioners shall ensure that participants in any study provide informed consent for use of all data collected;
- UX practitioners shall never disclose in their writings, reports, teaching materials or other public media or otherwise make public any information they have acquired about persons, employers or clients in the course of their professional work unless disclosure is both legal and that they have either taken reasonable steps to disguise the identity of the person, employer or client, or they have the express permission to disclose.

In this direction, relevant data protection measures will be taken so that the security of the data is guaranteed. The consortium's main priority is to ensure respect for the persons behind the data and consideration of the potential harm to individuals or communities. Information in excess of the strictly required data will not be employed, in order to avoid gathering data that is irrelevant. Quality of data will be taken into account and specific measures will be adopted to ensure that the data provided by the participants is up to date and accurate, including providing adequate information to the participants and maximum transparency. Within the consortium, members will take individual responsibility and hold each other accountable for the criteria use to make decisions.

In order to ensure that the anonymity of the participants is kept, technical and organizational measures will be taken to ensure that the personal data are not attributes to an identified or identifiable natural person. In this direction, all the data that could be used to identify the participant will be kept locally at their device, while there will be pseudonymization techniques in place that properly protect user's identity. Pseudonymization is a branch of anonymization. The key differentiator with pseudonymization is that it substitutes attributes with other values so that the original data can be reconstructed with additional information. Pseudonymization can be considered as a form of coding (the process of converting symbols in a message into another encoded set of symbols). This technique is useful where attributes in a dataset need to be uniquely identified but their actual value does not need to be kept. When applied, the values used to replace original values should not be derived in any way from the original values.

In order to make the process reversible, the database storing information required to facilitate the reversal should be kept to separate and secure from the pseudonymized dataset.

### 5.3.3 Data subject's rights

The shift from the Directive 95/46 to the GDPR was a timely opportunity to **strengthen the various data subject's rights** and, more specifically, to harmonize the practical modalities governing their exercise. In that sense, the move to a Regulation mirrors the EU institutions' wish to build a *'strong and more coherent data protection framework given the importance of creating the trust that will allow the digital economy to develop across*

<sup>30</sup> [http://uxpa.org/wp-content/uploads/2018/08/CoC\\_English.pdf](http://uxpa.org/wp-content/uploads/2018/08/CoC_English.pdf)

*the internal market*’ (Recital 7 GDPR). Recalling that the Directive 95/46 ‘has not prevented fragmentation in the implementation of data protection across the Union’, the Regulation underlines that an ‘effective protection of personal data requires the strengthening and the setting out in detail of the rights of data subjects and the obligations of those who process and determine the processing of personal data’ (Recitals 9 and 11 GDPR, respectively). To this end, it pairs the rights of data subjects with clear-cut modalities, clarifies the rights that were already laid down in the Directive 95/46 and introduces a new right of data portability. Given that the objective of this deliverable is not to provide an extensive review of all these prerogatives, only a summary of them is presented in Table 5.e. Finally, considering that within eTryOn data processing is not expected to result in a high risk to the rights and freedoms of data subjects, a Data Protection Impact Assessment is not required.

**Table 5-3:** Data subject's rights

<b>Name</b>	<b>Article</b>	<b>Subject's Right</b>
Modalities	12 GDPR	Among other, any communication issued by the controller in that context must be phrased in a concise, transparent, intelligible and easily accessible form, using clear and plain language (Article 12(1) GDPR).
Access to the data	15 GDPR	Grants the data subject the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where this is the case, <b>access</b> to these data
Right to rectification	16 GDPR	Allows the data subject to obtain from the controller the rectification of inaccurate personal data concerning him or her without undue delay.
Right to erasure	17 GDPR	This prerogative allows data subjects to seek erasure of their personal data in specific cases
Restrict the processing	18 GDPR	The controller may keep the personal data at stake, but must refrain from using them during the period for which the right applies
Right to data portability	20 GDPR	This newcomer allows data subjects to receive their personal data in a structured, commonly used and machine-readable format and to transmit them to another controller without hindrance from the original controller in specific cases
Object	21 GDPR	Offers the data subject the possibility to object, on grounds relating to his or her particular situation, to the processing of their personal data in specific cases
Right not to be a subject	22 GDPR	Right not to be subject to a decision based solely on automated processing which produces legal effects concerning him or her or significantly affects him or her. <sup>31</sup>

<sup>31</sup> This would be the case when data subjects face an automatic refusal or their online credit application or e-recruiting practices without any human intervention (Recital 71 GDPR).

### 5.3.4 Storage and transmission

eTryOn will observe European legal regulations concerning privacy. This is at a policy level, and will be monitored and reinforced by eTryOn Coordinators, Boards and the CERTH legal department. At the technical level reasonable technical measures concerning data security of personal and sensory data will be applied. For instance transmission of personal data over open communication channels will be done in encrypted form only. The partners have considerable experience with such privacy protection measures, either because it belongs to their core business, or because they have collected corresponding experiences in related projects.

**Retention:** Three months after the project completion all personal data that have been collected, stored and processed will be deleted. If there is a need to further process the data after the end of the project, the researcher will have to obtain a new consent from the participants.

**Usage:** eTryOn will further comply with Article 8 of the European Human Rights Convention. All pilots involving under aged and adult participants will be performed by qualified staff and with the practical experience, which will guarantee a strict conformance with national and international ethics and regulations. The consortium is committed to maintain strict rules of privacy and prevent all personal data from being abused or leaked. The collected data will be used strictly for the purposes defined by the project objectives. Under no circumstances, the consortium will provide, give or sell any information of its users to any third party (data will not be used under any circumstances for commercial purposes). Central to this framework are principles concerned:

1. recognizing the primacy of the views, choices of users and respect of their dignity;
2. operating according to universal principles of bioethics (Universal Declaration on Bioethics and Human Rights of UNESCO, 19 October 2005; The Charter of Fundamental rights of the EU, 2000; Helsinki Declaration of June 1964; Directive 95/46/EC; Regulation (EU) 2016/679);
3. Observance of requirements of national laws of each participant.

eTryOn will pay particular attention to issues that concern to biometric user data. More specifically, the users of our platform can generate their personal avatar in WP1 offering physical interactions with selected garments (WP2) in virtual or mixed environments (WP6, WP7). The 3D body scans can potentially allow or confirm the identification of a natural person, as they keep body measurements as 3D model, and skin color as texture. Consequently, our consortium will comply with the laws of the country where the data will be collected. Therefore, eTryOn's Ethics Board will be responsible for investigating the obligations and requirements relating to the biometrics ethics at various levels such as: i) capturing, ii) storage, iii) processing, iv) security, v) access, vi) privacy, vii) management, and viii) user's right to forget. In this direction, the protection of personal biometric data will be ensured through procedures and appropriate technologies, like the use of HTTPS protocol for the encryption of all internet transactions and appropriate European and Internet security standards from ISO, ITU, W3C, IETF and ETSI. To assure the participant's privacy, all data will be anonymized, encrypted and stored on a server to which only the relevant staff have access. More specifically the server onto which the data will be stored will have server-side encryption. That means that the server's administration personnel will be able to generate public keys for specific personnel who will have access to the data but will not be able to access the data themselves (since the private keys required for this access will be generated on the machine of the person with access to the data). This means that only the required personnel will have access to the data and even in the unlikely case of a possible data leak or server hack the data stolen will be fully encrypted and thus fully non-accessible.

### **5.3.5 Data access principles**

#### **Data access within institutions**

The project requires the thorough validation of techniques that include the processing, storage and transfer of personal data, as described in WP1-WP8. Access to the data will be available entirely from within the participating consortium partner facilities, and in addition, only by personnel employed by those institutions. Regarding data access required for evaluation, local ethical committees will be asked for permission, taking into account the latest European guidelines. Individual institutions will therefore be required to seek appropriate approval from their national ethical organizations, but the protocol for the data access will be established centrally within the project and approved by the Project Management Board (PMB) and the Ethics Board (EB) comprising of legal and ethical experts as well as fashion industry professionals (e.g. designers, retailers), permission from which will also be required prior to the commencement of any data access.

#### **Data access by other staff**

Access to non-anonymized data by individuals who hold neither substantive nor honorary contracts with their institutions will not be permitted. Data available to such personnel will have originated in third-party research data- collection projects with specific ethical sanction for research use when rendered unidentifiable, and will explicitly have been consented for this usage via processes established in those projects. Key to meeting the requirements formalized in the legislations identified above is the need for significant effort into Privacy Enhancing Technologies (PETs). Several consortium members already share considerable experience of these issues from previous relevant projects, and no significant issues regarding the processes of anonymization and pseudonymization within eTryOn are foreseen. Specific protocols and evaluations will be put in place to ensure robustness, and it will be the responsibility of WP8 to provide appropriate protocols.

### **5.3.6 Data transfer principles**

#### **Communications between consortium members (data transfer)**

Data transfer between consortium members is a requirement of several tasks within the project's technical and validation activities and, as indicated above, all such data will be rendered unidentifiable at the institution where it is acquired, and be fully consented for use. Thus, transfers between consortium members will involve only unidentifiable data, and industry-standard encryption technologies will be used within such communication systems. The eTryOn project developed advanced techniques for both centralized and federated security, ensuring system access and operation only by authorized personnel; these measures will be carried forward to eTryOn.

### **5.3.7 Provision for post-project data handling**

As indicated above, within the eTryOn project, for privacy and security, no identifiable personal data will be shared outside the institutional teams of the individuals. Any such external data transfers will occur under strict security regimes, only after the data has first been rendered unidentifiable, and then only with informed consent. However, the project is constructing communications systems that may remain viable for post-project use, so the non-identification, encryption and security systems employed will be appropriately robust so as to require no modification for any such subsequent extended usage; the overriding design stipulation is that of non- identifiable information transmission. Any such post-project usage will require further ethical sanction, in accordance with the nature of the exploitation and perpetuation mechanisms eventually envisaged.

### 5.3.8 Implementation directions in eTryOn to ensure privacy and ethical issues

Finding a balance between innovation and data protection without running the risks of over-reaction is a challenging task. Following the suggestions of (ENISA, 2015<sup>32</sup>), eTryOn will follow the concept of privacy and data protection by design, as a mechanism to address the privacy risks from the very beginning of the processing and apply the necessary privacy preserving solutions in the different stages of the big data value chain. Table 5.c resents an overview of the proposed designed strategies.

**Table 5-4:** Privacy by design strategies

Strategy	Description
Minimize	The amount of personal data should be restricted to the minimal amount possible (data minimization).
Hide	Personal data and their interrelations should be hidden from plain view
Separate	Personal data should be processed in a distributed fashion, in separate compartments whenever possible
Aggregate	Personal data should be processed at the highest level of aggregation and with the least possible detail in which it is (still) useful
Inform	Data subjects should be adequately informed whenever processed (transparency)
Control	Data subjects should be provided agency over the processing of their personal data.
Enforce	A privacy policy compatible with legal requirements should be in place and should be enforced.
Demonstrate	Data controllers must be able to demonstrate compliance with privacy policy into force and any applicable legal requirements.

eTryOn will implement a coherent approach to data privacy protection, taking into account the complete lifecycle of the data and its analysis envisioned in the project and best practices in the domain. Table 5.d provides an overview of the privacy by design strategies and their possible implementation measures in each of the phases of the data value chain, as these have been suggested by (ENISA, 2015).

**Table 5-5:** Privacy by design strategies in the data value chain

Data value chain	Privacy by Design Strategy	Implementation
	Minimize	Define what data are needed before collection, select before collect (reduce data fields, define

<sup>32</sup> <https://www.enisa.europa.eu/news/enisa-news/enisa-in-2015-annual-report>

Data acquisition/ collection		relevant controls, delete unwanted information), Privacy Impact Assessments
	Aggregate	Local anonymization (at source)
	Hide	Privacy enhancing end-user tools, e.g. anti-tracking tools, encryption tools, identity masking tools, secure file sharing, etc.
	Inform	Provide appropriate notice to individuals – Transparency mechanisms.
	Control	Appropriate mechanisms for expressing consent. Opt-out mechanisms. Mechanisms for expressing privacy preferences, sticky policies, personal data stores.
Data analysis & data curation	Aggregate	Anonymization techniques (k-anonymity family, differential privacy).
	Hide	Searchable encryption, privacy preserving computations.
Data storage	Hide	Encryption of data at rest. Authentication and access control mechanisms. Other measures for secure data storage.
	Separate	Distributed/de-centralized storage and analytics facilities
Data use	Aggregate	Anonymization techniques. Data quality, data provenance
All phases	Enforce/ Demonstrate	Automated policy definition, enforcement, accountability and compliance tools.



## **6. Health & Safety**

It is unlikely that the eTryOn applications will expose participants to physical harm, since it will rely on the use of approved commercial VR glasses for the first pilot and commercial mobile devices for the other two pilots. Physiological risks however may arise (e.g. having to do with the fact that the subject is put under cognitive load and stress during a long time, or due to the immersive VR causing nausea). As part of the research ethics adopted in the eTryOn project, participants will be made aware that they can always stop their participation (also during the study). Also, negative effects for the user, although their possibility to manifest is minimal, will be analyzed and countermeasures will be devised.

## **7. Conclusion**

D8.5 “Ethical, legal and privacy requirements and guidelines for implementation, updated” is the fifth deliverable regarding Work Package 8 (“Management”). Its goal is to provide an updated version of the solid presentation of the techniques and services that will be used during eTryOn in order to ensure that all ethical, legal and privacy requirements are adopted throughout both the implementation of the eTryOn technologies and the interaction with end users during the piloting phase that was initially presented in D8.4.

Two distinct categories of users will take part in the pilots (designers and customers). For both of them a different version of Terms and Conditions of Use is presented in this updated version. In addition, a full version of the Privacy Policy and the Information Sheet and Consent Form which are common for all users are also provided.

No further changes were necessary in regards to the initial description and guidelines for the data protection and privacy that were presented in D8.4: The various data types, which will be used during the pilots, was also presented. The consortium guarantees that all personal data collected during the project will be kept secure and unreachable by unauthorized persons. The data will be handled with appropriate confidentiality and technical security, as required by law in the individual countries and EU laws and recommendations, mainly the GDPR.

The main objective of D8.4 and D8.5 was to give a clear and in-depth presentation on the ways that eTryOn will use in order to comply with the various principles regarding data protection. On top of that, a brief description of data protection directives and opinions at European and National level (such as General Data Protection Regulation, Directive 95/46/EC) was given. Finally, it was stated that there is not any indicator that eTryOn will expose the participants in any form of physical harm during the pilot phase.

## **8. References**

### **Legislation**

#### **Council of Europe**

Council of Europe, Convention for the Protection of Human Rights and fundamental Freedoms, signed in Rome, 4 November 1950

Council of Europe, Convention for the protection of individuals with regard to automatic processing of personal data, Strasbourg, 28 January 1981.

#### **European Union**

Treaty establishing the European Union, *O.J.U.E.*, 26 October 2012, C326

Treaty on the Functioning of the European Union, *O.J.E.U.*, 26 October 2012, C326.

Charter of Fundamental Rights of the European Union, *O.J.E.U.*, 18 December 2000, C364/01

Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] *O.J.E.U.*, L119/1

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data [1995] *O.J.E.U.*, L281/31

### **Soft law**

#### **Article 29 Working Party**

Article 29 Working Party, 'Guidelines on Consent under regulation 2016/679' (WP259)

Article 29 Working Party, 'Opinion 1/2010 on the concepts of controller and processor' (WP169)

### **Case law**

#### **European Court of Human Rights**

ECtHR, *Amann v. Switzerland*, n. 27798/95, ECHR 2000-II

ECtHR, *Leander v. Sweden*, n. 9248/81

ECtHR, *Rotaru v. Romania*, n. 28341/95, ECHR 2000-V

#### **Court of Justice of the European Union**

CJEU, *Peter Nowak v. Data Protection Commissioner*, case C-434/16  
CJEU, *Digital Rights Ireland*, joined cases C-293/12 and C-594/12.  
CJEU, *Schaible*, case C-101/12  
CJEU, *Sky Österreich*, case C-283/11  
CJEU, *Nelson and Others*, joined case C-581/10 and C-626/10  
CJEU, *Afton Chemical*, case C-343/09  
CJEU, *Volker und Markus Schecke and Eifert*, joined cases C-92/09 and C-93/09  
CJEU, *Österreichischer Rundfunk and Others*, case C-465/00, C-138/01 and C-139/01

## Legal literature

De Waele H, 'Implications of Replacing the Data Protection Directive with a Regulation - a Legal Perspective' (2016) 12 Privacy & Data Protection 3

European Court of Human Rights, 'Guide on Article 8 of the European Convention on Human Rights' <[https://www.echr.coe.int/Documents/Guide\\_Art\\_8\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf)> accessed 14 March 2018

Kokott J and Sobotta C, 'The Distinction between Privacy and Data Protection in the Jurisprudence of the CJEU and the ECtHR' (2013) 3 International Data Privacy Law 222

Purtova N, 'The Law of Everything. Broad Concept of Personal Data and Future of EU Data Protection Law'

Tikkinen-Piri C, Rohunen A and Markkula J, 'EU General Data Protection Regulation: Changes and Implications for Personal Data Collecting Companies' [2017] Computer Law & Security Review <<http://linkinghub.elsevier.com/retrieve/pii/S0267364917301966>> accessed 10 July 2017

Ustaran E, European Data Protection Law and Practice (IAPP 2018)

Varotto S and Colin J, 'The European General Data Protection Regulation and Its Potential Impact on Businesses: Some Critical Notes on the Strengthened Regime of Accountability and the New Sanctions' (2015) 20 Communication Law 78

## Other

Laurel, Brenda & Snyder, Carolyn & Quesenbery, Whitney & Wilson, Chauncey & Molich, Rolf. (2001). Ethics in HCI. 10.1145/634067.634197

## Appendix I: Information Sheet and Consent Form

<b>Title of the Project:</b>	eTryOn - Virtual try-ons of garments enabling novel human fashion interactions
<b>Website:</b>	<a href="https://etryon-h2020.eu/">https://etryon-h2020.eu/</a>
<b>Coordinator:</b>	CERTH-ITI
<b>Leading Local Investigator:</b> .....	
<b>Programme:</b>	Horizon2020
<b>Contract Number:</b>	951908 - eTryOn
<b>Project Duration:</b>	27 months
<b>Start - End:</b>	October 2021 – September 2022

The following generic content will constitute the indicative terms and conditions of use between eTryOn and designers and customers that will use the three applications that will be developed in eTryOn: DressMeUp, Magic Mirror and Designer app. The content will be translated to the local language of the pilot site.

This Agreement is entered into as of XXX (the “Effective Date”) by and between NAME OF designer/ customer, under the laws of COUNTRY, having its principal place of business at FULL ADDRESS, and eTryOn, as represented by PERSON NAME, POSITION.

The study described in this document is part of the research project “eTryOn“. This project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No. 951908.

In consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

### A. PURPOSE OF THE STUDY/PROJECT

#### General background

With eTryOn, the use of interactive technologies will become mainstream in the fashion industry, focusing on three distinct fashion experiences that target both fashion designers and consumers: i) creative experience: while the creative process of garment design has changed over the past years from 2D sketches to using 3D design software, the visualization capabilities are still rather limited to just fitting the garments on grayscale predefined still avatars without considering the response of the garments during movements; ii) social experience: while the social experience of fashion has changed with the wide adoption of platforms like Instagram, it is still limited to just uploading images of people wearing physical clothes; and iii) shopping experience: the online shopping experience is essentially the same whether people buy clothes or electronics (i.e. they look at a few images of the items and their specs).

Building on recent advances in the fields of AI, CV and interactive devices, eTryOn’s mission is to modernize the way people create, consume and experience fashion items (clothes) by offering novel Human-Fashion-Interaction (HFI) applications that i) enhance

the creative process of garment design, ii) revolutionize the way people interact with fashion on social media, and iii) simulate the physical in-store experience for online shopping.

The vertical innovation objectives of eTryOn that will transform HFI for the three interaction experiences mentioned above can be summarized as follows: a) generation of avatars of the user through a self-scanning application based on mainstream devices (i.e. smartphones), b) modeling of the interaction between the avatars and 3D garments (i.e. size fitting and visualization of interactions during movements) to provide improved realism, c) emerging fashion trend detection, user profiling and garment recommendations, and d) design and development of three novel HFI applications in VR/AR. Based on the results of the aforementioned innovation objectives, we propose to transform the current HFI experiences (i.e. creative, social and shopping), efficiently tackling the needs of both the consumers and the fashion industry.

## **B. Terms and Conditions of Use**

Welcome to eTryOn. By using eTryOn's applications : DressMeUp, Magic Mirror and Designer app and services, you are agreeing to all the terms below.

ETryOn and its applications (DressMeUp, Magic Mirror and Designer app, collectively referred to throughout as eTryOn) offer a variety of services aiming to transform the current HFI experiences (i.e. creative, social and shopping), efficiently tackling the needs of both the consumers and the fashion industry..

These Terms and Conditions of Use ("Terms") govern your access to and use of our Services. Please read the Terms carefully before using our Services, as they are a legally binding contract between you and eTryOn. Your access and use of the Services (regardless of whether you create an account with us), constitutes your agreement to these Terms and our Privacy Policy, which is incorporated into the Terms. Stated alternatively, you have the right to disagree with any part of the Terms and not use our Services.

Please feel free to contact us if you have any questions or suggestions by sending an email to [etryon.project@gmail.com](mailto:etryon.project@gmail.com).

### **1. Use of the Services and Your Account**

#### **(a) Who can use eTryOn and for what purposes**

ETryOn aims to revolutionize the interaction between users (i.e. fashion designers, lovers and consumers) and fashion items, by researching and developing technologies that allow virtual try-ons of garments.

In order to participate in the application's pilots and use eTryOn services you must be above 16 years old and either be professionally involved in the fashion industry (design, retail etc) or be interested in fashion as a consumer with an active social media presence (influencer, blogger, vlogger).

DressMeUp can be used by customers, influencers and designers: in the application you will take a photo or video of yourself with a smartphone and upload it to the eTryOn cloud software, where your 3D avatar will be created and you will be able to select from a list of available clothes for the one that you want to try on. The garment will be automatically rigged and skinned on your avatar and you will be able to see yourself in this outfit in various poses and animations and share this through your social media accounts. Magic Mirror also addresses customers, influencers and designers: you will be able to see yourself either in a real time digital mirror setting or in a virtual room with pre-computed animations, and virtually try on the garments you choose from the included list. Designer App is mainly targeting fashion designers. This tool can be used from the early stages of

the garment design process up until the final stages. A designer will be able to work on and design new clothes in a VR environment and check out the results on a virtual avatar, inspect the garment's qualities and make any possible changes that might be needed.

### **(b) Your Account**

You will need to create an eTryOn account to access the Services, and it's important that the information associated with your account is accurate and up-to-date (particularly your email address – if you ever forget your password, a working email address is often the only way for us to verify your identity and help you log back in). For the Designer app, in order to reassure that fashion industry professionals will use the app, you may need to register your professional details in order to proceed to creating your account.

You may need to register for an eTryOn account in order to access or use certain Services. Your account may automatically provide you access and means to use new Services that we create.

When you create an account for any of our Services, you must provide us with accurate and complete information as prompted by the account creation and registration process, and keep that information up to date. Otherwise, some of our Services may not operate correctly, and we may not be able to contact you with important notices.

If you create an account, you are responsible for maintaining the confidentiality of any and all actions that take place while using your account, and you must notify our Support Team right away of any actual or suspected loss, theft, or unauthorized use of your account or account password. We are not responsible for any loss that results from unauthorized use of your username and password, with or without your knowledge.

If you forget your password and have an existing eTryOn account, click on the “Sign In” or “Log In” link at the top of the page. You will be taken to the Sign In page, where you can select “Forgot Password” to create a new password.

You have the right to delete your account at any time by using the relevant section. If you choose to permanently delete your account, the non-public Personal Data that we have associated with your account will also be deleted.

### **(c) Service Updates, Changes and Limitations**

Our Services may evolve to be used by a broader public. Therefore, we need the flexibility to make changes, impose limits, and occasionally suspend or terminate certain offerings. We may also update our Services, which might not work properly if you don't install the updates.

We may from time to time, as we see fit, develop and provide updates for certain Services. This may include upgrades, modifications, bug fixes, patches and other error corrections and/or new features (collectively, “Updates”). Certain portions of our Services may not properly operate if you do not install all Updates. These Updates may include updated versions of our applications, which may automatically electronically upgrade the versions used on your device, as well as updates to apps and other connected products. You expressly consent to such automatic Updates. Furthermore, you agree that the Terms (and any additional modifications of the same) will apply to any and all Updates to the Services.

### **(d) Service Monitoring and Suspension**

We may change, suspend, or discontinue any or all of the Services at any time, including the availability of any product, feature, database, or Content. We may also deactivate, terminate or suspend your account at any time:

(1) if we, in our sole discretion, determine that you are or have been in violation of these Terms or the spirit

(2) if we, in our sole discretion, determine that you have created risk or possible legal exposure for eTryOn

(3) due to unexpected technical issues or problems.

We will endeavor to notify you by email or at the next time you attempt to access your account after any such deactivation, termination or suspension.

### **(e) Security**

We have taken strong measures to protect the security of your Personal Data, User-Generated Content, and account. Please let us know right away if you believe your account has been hacked or compromised.

## **2. Privacy**

By using the Services you consent to the collection, use, and providing your Personal Data, as registered for the purposes of creating your account.

## **3. Data Processing**

eTryOn will ensure that your personal data will be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');

(b) collected for specified, explicit and legitimate purposes of eTryOn and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or other research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes ('purpose limitation');

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy');

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or other research purposes or statistical purposes in order to safeguard the rights and freedoms of the data subject ('storage limitation');

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures ('integrity and confidentiality').

## **4. Rights**

eTryOn aligns with the GDPR EU legislation 2016/679, providing you with the following rights regarding your personal data:

- The Right to Information
- The Right of Access
- The Right to Rectification
- The Right to Erasure
- The Right to Restriction of Processing
- The Right to Data Portability
- The Right to Object



- The Right to Avoid Automated Decision-Making

## **5. Ownership and Use of Content**

### **(a) Our License to You**

You are welcome to access and use our content, products and services. In order to do so, you will need to respect our intellectual property rights and only use our Services the way they are intended to be used.

You acknowledge and agree that the Services, any necessary software used in connection with the Services (if any), and the eTryOn Content contain proprietary and confidential information that is protected by applicable intellectual property and other laws. We grant you a limited, revocable, personal, non-transferable, and nonexclusive right and license to access and use the Services and eTryOn Content, provided that you do not (and do not allow any third party to) copy, modify, create a derivative work from, reverse engineer, sell, assign, sublicense, grant a security interest in, or otherwise transfer any right in the eTryOn Content or Services to anyone else.

This license is subject to the Terms, including our Community Guidelines and eTryOn Content. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Services, the Services' software, or any eTryOn Content offered as part of the Services (other than User-Generated Content), in whole or in part. Please do not download, copy, or save eTryOn Content, except (i) as expressly permitted by the functionality of certain Services (e.g., sharing virtual try-ons on your personal social media accounts) as provided for in the specific guidelines and/or additional terms applicable to those Services, or (ii) solely for personal use or your records.

### **(b) Your License to Us**

When you post content in connection with eTryOn, it still belongs to you – however, you are giving us permission to use that content in certain ways in connection with our Services and make the content available to others.

We reserve the right to monitor, remove or modify User-Generated Content for any reason and at any time, including User-Generated Content that we believe violates these Terms, the Community Guidelines, and/or our policies.

### **(c) Your Feedback**

We value hearing from fashion industry professionals, and are always interested in learning about ways we can improve eTryOn. If you choose to submit comments, ideas or feedback, you should submit the idea through the relevant section on eTryOn, and you agree that we are free to use the ideas you submit without any restriction or compensation to you.

## **6. Miscellaneous**

These miscellaneous provisions are part of just about every online terms agreement. Basically, they ensure that this agreement between us is enforceable.

You agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of the Terms or your use of the Services. The Terms and any Product-Specific Terms constitute the entire agreement between you and us with respect to your use of the Services.

You may not assign, delegate, or otherwise transfer your account or your obligations under these Terms without our prior written consent.

Our notice to you via email, regular mail, or notices or links displayed in connection with the Services constitutes acceptable notice to you under the Terms. We are not responsible for your failure to receive notice if email is quarantined by your email security system (e.g.,

“junk” or “spam” folder) or if you fail to update your email address. Notice will be considered received forty-eight hours after it is sent if transmitted via email or regular mail.

## 8. Contact Us

If you have any feedback, questions or comments about the Services, please contact our Research Team:

Email: [etryon.project@gmail.com](mailto:etryon.project@gmail.com)

Please be sure to include in any email or postal mail your full name, email address, postal address, and any message.

## 9 CONFIRMATION

Your participation in this study is only possible if you freely and independently sign this consent to authorize us to use the data you provide. If you do not wish to do so, please do not participate in this study.

Mark one of the following:

I have read the information in this consent or the information has been read to me in an adequate way. All of my questions about the study and my participation in it have been answered.

I read all the information in this form.

The information in this form was read to me by:

.....

All the questions that I had have been answered by:

.....

I confirm that I am over the age of 16 and I have read and agreed to the Terms of Use.

I agree that eTryOn will have access only to the data I might upload through the eTryOn applications and the data I might create or upload during the project duration.

I agree that eTryOn will have access to the data obtained from the eTryOn apps that I will install on my phone, during the project pilot trials.

I agree that eTryOn will have access to the data (analytics) obtained from the use of the eTryOn apps that I will use, during the project pilot trials.

I agree that eTryOn will have access to the data obtained from questionnaires I will fill in, during the project duration.

I agree that the aforementioned data can be used for research purposes, after being properly anonymized.

I agree >Name of the Organization< during the pilot trials, can view all data about myself as visualized by the eTryOn apps.

I authorize the use and diffusion of my answers to the entity aforementioned for the purposes above indicated. Signing this consent does not imply giving up to any legal rights. I accept in a voluntary way to participate in this investigation carried out by >Name of the Organization < and the rest of the members of the eTryOn Project. I understand that I have the right of having a copy of this informed consent. Therefore, a copy will be provided to me.

Name and surname of participant:

.....  
.....

Date:

.....  
.....

Signature of participant

.....  
.....

Name and surname of the researcher

.....  
.....

Date:

.....  
.....

Signature of the researcher:

.....  
.....

## **Appendix II: Privacy Policy**

This Privacy Policy is meant to provide you with the information regarding how we, eTryOn services, collect personal data relating to you, where we collect it from, how we process it, who we share it with, how we secure it, and how you can enforce your legal rights for cease of processing, amendment, deletion and ratification.

This privacy policy covers your use of our software, apps, services, and the website.

Note that you are under no legal obligation to provide us with any personal data, and that your consent is the sole basis for our use of it.

By setting up an eTryOn account, by downloading and using our applications, by clicking the “I accept” button (or its equivalent), you are accepting the practices described in this Privacy Policy. If you do not agree to this Privacy Policy, please do not register for an account with eTryOn, download apps made available by eTryOn, or otherwise access our Services.

eTryOn is a project funded from the European Union’s Horizon 2020 research and innovation programme under grant agreement No. 951908. The level of personal data protection is adequate to the level required by all relevant EU regulation.

### **HOW DO WE COLLECT PERSONAL DATA?**

We collect personal data in the following methods: First, we collect personal data when you register to our services, use our services, contact us via forms, and interact with us via support channels. We do so by taking the personal data you filled out in our forms and contents of messages. We also collect information via your use of the services, and our interaction, meaning the correspondence between the parties.

Then, we collect personal information when we interact with you: when you contact us through our support systems, when you send us emails or when you contact us via phone, or when we meet in person.

We also collect the technical information about you when you browse our website and use the services.

### **WHAT PERSONAL DATA DO WE COLLECT?**

We collect mainly information that relates to your use of our services, which includes: (i) demographics, your first and last name, your email address, and your approximate location (via your IP address); (ii) information on your interactions with us; (iii) information relating to browser type, device type, screen resolution, IP address and technical information; (iv) information relating to how you use our services, including clickstream and features used (v) information on your body type (height, weight) and gender.

For the application’s end-users, we may collect information about the use of the apps.

We also collect the contents of all correspondence between ourselves and prospective and actual users.

We may also collect log files from your use of the apps if you send it to us as a part of a support ticket.

We also collect User feedback, community discussions, chats and other interactions on our Services.

If you access our Services on your mobile telephone or other mobile device, including tablets, we collect mobile device identifiers, including MAC Address, and IP Address. Certain aspects of our Services will create and assign to your device an identifier that is similar to an account number. We may collect the name you have associated with your device, device type, telephone number, country, geo-location and any other information you choose to provide or allow us to access.

The categories of information we collect can include:

- Account Information

- Examples of Personal Information collected: name, email, address, phone number.

- Purpose of collection: to provide products or services to you to fulfill our contract, manage your account, to provide you with invoices and/or order confirmations, communicate with you, screen our orders for potential risk or fraud, and when in line with the preferences you have shared with us, provide you with information or advertising relating to our products or services.

- Order Information

- Examples of Personal Information collected: name, billing address, shipping address, payment information, email address, and phone number. Note we use third-party payment processors to process your payments. Because we use third-party payment processors, we do not retain any personally identifiable financial information such as credit card numbers. Rather, all such information is provided directly to the third-party processor. The payment processor's use of your Personal Information is governed by their privacy notice. Please review each processor's privacy notice to understand how they will manage or otherwise process your Personal Information, including your financial data.

- Purpose of collection: to provide products or services to you to fulfill our contract, to process your payment information, arrange for shipping, and provide you with invoices and/or order confirmations, communicate with you, screen our orders for potential risk or fraud, and when in line with the preferences you have shared with us, provide you with information or advertising relating to our products or services.

- Communications and Customer Support Information

- Examples of Personal Information collected: name, billing address, shipping address, email address, phone number, or any other Personal Information you choose to provide us.

- Purpose of collection: to provide customer support, to investigate and respond to your inquiries, and to communicate with you, to enhance the services we offer to our users and to manage and grow our organization. If you register for our newsletters or updates, we may communicate with you by email.

- AR Features (Photos and Images)

- Examples of Personal Information collected: individual photos which may include backgrounds or other objects by which your general location could be derived.

- Purpose of collection: to provide products or services to you to fulfill our contract.

- Marketing emails

- Examples of Personal Information collected: email and applicable interests and communication preferences.

- Purpose of collection: send you regular updates about our products or services, manage our communications with you, and send you information about products and services we think may be of interest to you.

## **PERSONAL INFORMATION COLLECTED FROM OTHER SOURCES AND THIRD PARTIES**

Although we often collect the Personal Information described above directly from you, we also collect this information through service providers and other third parties that collect it on our behalf, as noted below. Please note that our systems may record Personal Information that you type into our websites and other online Service even if you do not choose to submit it.

- Account Creation / Single Sign-On. We may use single sign-on ("SSO") to allow a user to authenticate their account through their work email. We will have access to certain information from those third parties in accordance with the authorization procedures determined by those third parties.

- Examples of Personal Information collected: username, password, name, email address, and profile picture.

- Purpose of collection: We use this information to operate, maintain, and provide to you the features and functionality of the Service. We may also send you service-related emails or messages (e.g., account verification, purchase confirmation, customer support, changes, or updates to features of the Site, technical and security notices).

- Social Media. When you interact with our Service through various social media, such as when you click on the social media icon on the Service, follow us on a social media site, or post a comment to one of our pages.

- Examples of Personal Information collected: profile information, profile picture, gender, username, user ID associated with your social media account, age range, language, country, and any other information you permit the social network to share with third parties. The data we receive complies with your privacy settings with the social media network.

- Purpose of collection: We use this information to operate, maintain, and provide to you the features and functionality of the Service, as well as to communicate directly with you, such as to send you email messages about products and services that may be of interest to you.

## **INFORMATION FROM OTHER SOURCES**

We may obtain information from other sources, including through third-party information providers, customers, public sources, or through transactions such as mergers and acquisitions. We may combine this information with other information we collect from or about you. In these cases, our Privacy Notice governs the handling of the combined Personal Information. We use this information to operate, maintain, and provide to you the features and functionality of the Service, as well as to communicate directly with you, such as to send you email messages about products and services that may be of interest to you.

## **PERSONAL INFORMATION AUTOMATICALLY COLLECTED**

As is true of most digital platforms, we and our third-party providers and partners collect certain Personal Information automatically when you visit or interact with our websites and:

- Log Data: Including your internet protocol (IP) address, operating system, browser type, browser ID, the URL you entered and the referring page/campaign, date/time of your visit, the time you spent on our Service and any errors that may occur during your visit to our Service.
- Analytics Data: Including the electronic path you take to our Service, through our Service and when exiting our Service, as well as your usage and activity on our Service, such as the links, objects, products and benefits you view, click or otherwise interact with (also known as “Clickstream Data”). This data will allow us to better understand how you are using our Service and help improve your user experience
- Location Data: Including your general geographic location based on the Log Data we collect or more precise location when permitted by law.
- Application Data: Some of our services offer mobile or browser applications to allow you to take advantage of our service offerings on the go and/or when visiting third-party websites and other online services. Certain of these applications also allow us to access more precise Location Data about you and collect information about your use and interactions with third-party websites and online services (including the products or services you are interested in or purchase) to better serve you. We, and our third-party partners such as Snap (through the use of the SnapCamera Kit to power the features of the AR technology) and Apple (through the use of the TrueDepth camera to improve the quality of the lenses), may also collect metadata included in the photos and images that you upload, such as your device model, camera type, camera settings (e.g. ISO, shutter, focal length, lens, aperture), image information (e.g. format, file size, date and time, resolution) or location data (e.g. geotagging).
- Our third-party partners such as Snap Inc. may also use information from Apple’s TrueDepth camera to improve the quality of Lenses. Information from the TrueDepth camera is used in real time — Snap Inc. doesn’t store this information on their servers or share it with third parties. [Link to the Snap Inc Privacy Policy](#)
- We don’t collect and share any Face Data with our APP.

Please keep in mind that when you voluntarily disclose Personal Information which is publicly viewable, that information will be publicly available and can be collected and used by others. We cannot control who views information (and what they do with information) you voluntarily post publicly.

## **HOW DO WE PROCESS PERSONAL DATA?**

We use your personal data to provide you with the services. This is the purpose of collecting the personal data and the main reason for processing. We use your personal data as part of the management of the relationship between us in that capacity.

When you provide us with your contact information, either by filling out a form, submitting a request, or contacting our support, we will keep this information on our services and

customer relations and employee and supplier management systems. We use this to better understand our customers' needs and to contact them occasionally, and to perform, monitor, and manage our relations, duties, and obligations.

We process your personal data also to create statistical, non-personally identifiable, data which is used to assist us in better understanding of the use of our services, website and applications. By using this data we can help you use our products and services in a better way.

**AR Providers:** As part of the Service, we use augmented reality (AR) to enhance your photos and images and integrate the eTryOn apps. As described in the Collection and Use of Personal Information section, we use business partners such as Snap and Apple. Any information shared with Snap, Apple, or any of our third party business partners is subject to their privacy policy.

**Service Providers:** We share Personal Information with third party contractors and service providers who perform services on our behalf, which are subject to reasonable confidentiality terms, and which may include processing payments, shipping partners, AR features and technology, providing web hosting services, technology support providers, email communications providers, analytics providers, data storage providers, and web and video hosting providers and developers.

**Business Partners:** We may disclose Personal Information to our business partners for transactional and marketing purposes, including to promote their products or services. We may also share your Personal Information with other third parties who may have products or services we think you may enjoy.

**Aggregated and Anonymized Information:** We may share your Personal Information with others in an aggregated or otherwise anonymized form that does not reasonably identify you directly as an individual.

#### **WHO HAS ACCESS TO YOUR PERSONAL DATA?**

We do our best to ensure that your personal data remains secure. We provide our employees with limited, monitored, access, only on a need-to-know basis.

We also use some contractors that are engaged by our company to provide us with services. Both our employees and contractors are under strict confidentiality agreements.

We also use a few, limited, third parties to process your information. These third parties are:

- We are Unfolded (former Mallzee), which is one of our business partners, receives statistics about the use of our apps, but no personally identifiable information.
- Google, which helps us with advertising and remarketing.
- Google Analytics, which collects information about the usage in our software and website.
- WordPress, which hosts our website.

We also comply with legal requests, meaning that if we get an authorized legal warrant to provide your personal data from a law enforcement authority, court or other authorized authority, we will act accordingly.



## **HOW DO WE SECURE PERSONAL DATA?**

We secure personal data by storing it in industry-grade servers, where information may be encrypted to prevent abuse and misuse. We also make sure that our servers are checked, occasionally, for known vulnerabilities and bugs, and we update our operating systems periodically. We make sure that all access to our servers is logged, and in some cases use two-factor-authentication.

## **WHEN DO WE DELETE PERSONAL DATA?**

We remove personal data when it is no longer required. As a general rule, we delete personal information from user and marketing contacts six months after consent to contact is withdrawn.

## **HOW CAN WE CONTACT YOU?**

We use your contact information to contact you from time to time with updates relating to our project and applications or new features or information relating to a security breach, if it happens. We also may send you push notifications or text messages to update you with information relating to your specific use of the applications.

You can opt out from all notifications or any notifications using our services.

## **HOW CAN YOU REVIEW, AMEND, OR DELETE YOUR PERSONAL DATA?**

We can provide you with a copy of your personal data if you contact us by sending an email to [etryon.project@gmail.com](mailto:etryon.project@gmail.com); after you do so, we will verify that this request is genuine, and send your personal data. If you find any of the personal data to be inaccurate, please let us know and we will amend it.

You can also request, post-review, that we remove personal data. In such case, we will retain the minimum amount that we are required by law, but will remove all excess data.

## **HOW CAN YOU UNSUBSCRIBE FROM OUR EMAILS?**

You can unsubscribe from our emails by clicking the Unsubscribe link in such an email and following the instructions. Alternatively, you can unsubscribe by sending an email with "Unsubscribe" as the subject line to [etryon.project@gmail.com](mailto:etryon.project@gmail.com). Your email address will be removed from our list of email addresses used for marketing purposes within ten working days.

## **CAN YOU REQUEST THAT WE CEASE PROCESSING?**

Yes. You can contact us at [etryon.project@gmail.com](mailto:etryon.project@gmail.com) and request that we cease processing your personal data. However, in such a case we will not be able to provide you with any of the services.

## **CHILDREN**

We do not knowingly collect Personal Information from children under the age of 16. If you are a parent or guardian and believe your minor child has provided us with Personal Information without your consent, please contact us at [etryon.project@gmail.com](mailto:etryon.project@gmail.com) and we will take steps to delete such Personal Information from our systems.

## **COOKIES**

Our website uses first party and third party cookies. A cookie is a small file placed on your browser's environment which allows us to identify you as a unique user. It does not contain

any personal information, nor can it be used by anyone but ourselves and our third-party service providers (who provide third-party cookies).

You may opt out from storing cookies on your device altogether, or specifically from our website in your browser's settings. However, this may impair your use of our services.

### **WEB BEACONS**

We also use "web beacons" to help deliver cookies and gather usage and performance data. Our website may include web beacons, cookies, or similar technologies from third-party service providers. By providing us with information about how you interact with our Services, these tools help us analyze and learn how to make our Services better and customize our communications with you. The following analytics technologies are in use: Google Analytics.

### **CLEAR GIFS**

We may also use clear gifs in our HTML-based emails to let us know which emails have been opened by recipients. This allows us to gauge the effectiveness of certain communications and the effectiveness of our marketing campaigns. For this reason, these types of clear gifs are tied to personally identifiable information.

eTryOn and our partners, such as marketing partners and analytics providers, may use tracking technologies such as cookies, beacons, tags and scripts. These technologies are used in analyzing trends, administering our websites, tracking users' movements around the apps, and to gather demographic information about our user base as a whole. We use cookies for various purposes including our shopping cart, to remember users' settings, and for authentication. Users can control the use of cookies by adjusting individual browser settings. However, if you reject cookies, you may still use our websites, but your ability to use some features or areas of our websites may be limited.

We may also use tools or third party analytical software to automatically collect and use certain non-Personal Information that does not directly enable eTryOn to identify you.

### **CAN WE AMEND THIS PRIVACY POLICY?**

Yes. We may amend this privacy policy from time to time. We will keep you updated when we do so. Please note that updates and changes will be logged in our changelog hereunder. No update shall have any retroactive effect.

## **Appendix III: Terms and Conditions: Designer App**

### **1. Binding Agreement**

1.1 These terms ("Terms") govern your use of the services and applications of eTryOn project, namely Designer app, as well as other services that may be developed, modified, combined, and/or newly offered through our apps and website from time to time (collectively, "Services").

1.2 These Terms also govern your use of our apps that you download or that we include as part of our Services, including any related applications and documentation (collectively "eTryOn Software" or "Software").

1.3 By setting up an eTryOn account, by using our Services, by using or downloading eTryOn Software, or by clicking the "I accept" button (or its equivalent), you agree to these Terms. For the avoidance of doubt, if you set up an eTryOn account, use our Services, use or download our Software, or click the "I accept" button (or its equivalent) on behalf of an entity, organization, or Legal Entity, you represent and warrant that you are authorized to accept these Terms on behalf of such entity or organization--in which case "you" and "your" will refer to that entity or organization.

1.4 If at any point for any reason you do not agree to any portion of the then-current version of these Terms, our Privacy Policy, or any other eTryOn policy, rules or codes of conduct relating to your use of our Services, your license to use our Services shall immediately terminate and you must stop using our Services and promptly remove any eTryOn Software installed on your computer. eTryOn offers various Services and Software. As a result, additional terms or service requirements may apply. Additional terms will be available with the relevant Services or Software, and those additional terms become part of your agreement with us if you use those Services or Software.

1.5 Unless otherwise set forth in these Terms, to the extent these Terms conflict with any other eTryOn terms, policy, rules or codes of conduct, these Terms shall govern.

### **2. Definitions**

Unless otherwise defined in the main body of these Terms, capitalized terms used in these Terms are defined as follows:

2.1 "Affiliate" of a person or entity shall mean any entity Controlled by, under common Control with or under the Control of such person or entity. "Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of registered capital or voting securities, by Agreement or otherwise, and includes (i) ownership directly or indirectly of fifty percent (50%) or more of the shares or other equity interests in issue or registered capital of such entity, (ii) ownership, directly or indirectly of fifty percent (50%) or more of the voting power of such Person or (iii) the power directly or indirectly to appoint a majority of the members of the board of directors or similar governing body of such entity, and the terms "Controlled" and "Controlling" shall have correlative meanings.

2.2 "Authorized User" means the employees of Licensee who are under the control of and authorized by the Licensee to install or access the Licensed Materials.

2.3 "eTryOn Samples" means samples provided by eTryOn in the Licensed Materials, including, but not limited to, avatars, sample patterns and designs, modules for patterns and designs, and expressions of components and elements used in patterns and designs. eTryOn samples may be modified where such modifications are permitted by the intended functionality of the Licensed Materials.

2.4 "Legal Entity" or "entity" means any company, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, proprietorship, joint

venture or other form of business organization. In the context of Academic Licenses, “Legal Entity” also means a Qualified Academic Institution.

2.5 “Licensed Materials” means the Services, the eTryOn Software, Supplemental Materials, and/or User Documentation, as applicable.

2.6 “Licensee” or “you” means:

2.6.1 In the context of Individual Licenses, either a single, natural person or a Legal Entity to which the Licensed Materials are exclusively licensed, otherwise meeting the eligibility criteria for an Individual License set forth in Section 3

2.6.2 In the context of Academic Licenses, a single Qualified Academic Institution to which the Licensed Materials are exclusively licensed, otherwise meeting the eligibility criteria for an Academic License set forth in Section 3.

2.6.3 In the context of Enterprise Licenses, a single Legal Entity to which the Licensed Materials are exclusively licensed, otherwise meeting the eligibility criteria for an Enterprise License set forth in Section 3.

2.7 “Modification” means any change by Licensee (but only to the extent permitted by the intended functionality of the Software and/or Supplemental Materials) to the substance of a eTryOn Sample or any change to the substance of the contents of a file containing a eTryOn Sample; and/or any new file that contains any part of a eTryOn Sample; all of which ensures that the eTryOn Sample is not the primary source of value. Modifications may not be made to Restricted eTryOn Samples.

2.8 “Open Source Software and Other Software” means the open source software and other software disclosed and referenced at <https://etryon-h2020.eu/software/>

2.9 “Restricted eTryOn Samples” means non-modifiable avatars (and each of their elements) and clothing and accessories included in the Licensed Materials, and any other Licensed Materials specified as “Restricted Licensed Materials” (or similar verbiage).

2.10 “Supplemental Materials” means materials, other than Software and related User Documentation that are distributed or made available by eTryOn for use with Software. Supplemental Materials include, without limitation, eTryOn Samples and Restricted eTryOn Samples.

2.11 “Update(s)” means any corrections, patches, maintenance, and/or replacement of a Software version with a new Software version as and when eTryOn deems such Update is necessary to correct errors, remove, add or improve functionalities, and/or add service packs.

2.12 “User Documentation” means the explanatory or instructional materials for Software or Supplemental Materials.

### **3. Equipment**

You must provide all equipment and software necessary to access our Services or Software. You are responsible for all internet fees, data fees, or mobile fees that you incur while accessing our Services or Software.

### **4. Changes to Terms & Our Services**

4.1 eTryOn reserves the right, at our discretion, to change or modify these Terms at any time. Although it is your responsibility to review these Terms from time to time for any changes, eTryOn will notify you of any revisions to these Terms by posting them at this location, and may provide other notice which may include by email or in-Service notice. If you do not agree to the revised Terms, you must stop using our Services. Your continued use of our Services following any revision to these Terms signifies your assent to and acceptance of the revised Terms.

4.2 You agree that eTryOn retains the unfettered right to modify any aspect of our Services or Software. You acknowledge that eTryOn has been, is, and will be constantly making changes to our Services or Software. These changes include modifications to features, functions or abilities of any element of our Services or Software.

4.3 All descriptions, images, references, features, content, specifications, products and prices of products and services described or depicted on our Services or Software, are subject to change (including availability) at any time without notice.

## **5. License To Use Our Services & Software**

5.1 Subject to your compliance with these Terms and your eligibility for the applicable License Class determined by criteria set forth in Section 3, eTryOn grants you a non-exclusive, non-transferable license when you sign up for an account to:

5.1.1 access and use our Software and/or Services for your own personal use or internal business purposes, as applicable;

5.1.2 download and install eTryOn Software on authorized devices within your possession and control, subject to the applicable License Type, License Class, and License Term, and

5.1.3 use eTryOn Software to access and use our Services for your own personal use or internal business purposes or Academic Purposes, as applicable.

5.2 Our Services and eTryOn Software, and their content, features, and functionality are owned by eTryOn, its licensors, or other providers of such material and is protected by copyright and other laws and international treaty provisions. Except for the licenses explicitly granted in these Terms, these Terms do not grant you any rights to patents, copyrights, trade secrets, trademarks, source code, or any other right, title or interest in our Services or eTryOn Software, ownership of which is retained by eTryOn and its suppliers, as applicable. Any updates to our Services or eTryOn Software are also governed by these Terms.

5.3 eTryOn Software is licensed, to you for use only under these Terms, and eTryOn reserves all rights not expressly granted to you.

5.4 You agree to maintain and reproduce all copyright, proprietary, and other notices on all copies, in any form, of eTryOn Software in the same form and manner that such copyright and other proprietary notices are included on eTryOn Software.

5.5 Work product and other data created using our Services or Software may contain certain notices and limitations that make the work product and other data usable only in certain circumstances. In addition, if you combine or link your work product or other data created using our Services or Software with work product or other data otherwise created, then such other work product or data may also be affected by these notices and limitations. eTryOn will have no responsibility or liability whatsoever if you combine or link work product or other data created using our Services with work product or other data otherwise created. In addition, you will not remove, alter or obscure any such notices or limitations.

## **6. Unauthorized Activities**

6.1 You may use our Services and/or Software only for lawful purposes, in accordance with these Terms, and only in the manner contemplated by the functionalities of our Services and/or Software (in eTryOn's sole judgment).

6.2 Except as expressly authorized in these Terms or allowed by applicable law, you may not (i) use, copy, modify, reverse engineer, disassemble, decompile, modify, or transfer our Services or eTryOn Software, or otherwise attempt to derive the source code of our Services or eTryOn Software; (ii) translate, adapt, arrange, or create derivative works based on, or otherwise modify our Services or eTryOn Software or any elements thereof for any purpose; provided however you may make Modifications to eTryOn Samples

where such Modifications are permitted by the intended functionality of our Services or eTryOn Software and such Modifications ensures that the eTryOn Sample is not the primary source of value; (iii) distribute eTryOn Samples as your work product without Modifications, (iv) distribute and/or make Modifications to Restricted eTryOn Samples; or authorize any third party to do any of the foregoing;

6.3 Any reproduction or redistribution of our Services or eTryOn Software is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible.

6.4 Without limiting our other remedies, we may limit, suspend, deactivate or terminate user accounts, prohibit access to all or any portion of our services, delay or remove user content, and take technical and legal steps to prevent you from accessing our services if we believe that you are creating risk or possible legal liabilities, infringing the intellectual property rights of third parties, or acting inconsistently with the letter or spirit of our terms or policies, with or without notice to you. You can lose your account as a result of account suspension, deactivation, or termination, as well as any benefits, privileges, items and purchased items associated with your use of our services, and eTryOn is under no obligation to compensate you for any such losses or results.

## **7. Registration, Usernames & Passwords**

7.1 In order to access some features of the Services, you may be required to register an account with us.

7.2 When creating or updating an account, you may be asked to provide us with certain personal information, which may include your email address and other information that can be used to identify you. Such information, if provided to us, will be held and used in accordance with our Privacy Policy.

7.3 Notwithstanding anything herein to the contrary, you acknowledge and agree that you have no ownership or other property interest in the account, and you further acknowledge and agree that all rights in and to the account are and shall be owned solely and exclusively by eTryOn.

7.4 You agree to (i) provide us with current, complete and accurate information as prompted by the applicable registration form, and (ii) maintain and promptly update the registration data to keep it true, complete, accurate and correct. If you provide any information that is untrue, inaccurate, not current or incomplete, eTryOn has the right to suspend or deactivate your account and refuse you from any and all current and future use of the Services (or any portion thereof).

7.5 When registering for an account, you will be asked to choose a password and username. You may not use a username that is used by someone else, is vulgar or otherwise offensive (as determined by eTryOn in its sole discretion), infringes any trademark or other rights of others, or is used in any way that violates these Terms. You are entirely responsible for maintaining the confidentiality and security of your account information (including usernames, passwords and billing information).

7.6 eTryOn will not be liable for any loss or damage that you may suffer as a result of someone else using your account, either with or without your knowledge. You will be liable for any and all losses incurred by eTryOn and/or any of its licensors due to someone else using your account. You may not use anyone else's account at any time. Your account is personal to you and you may not transfer or make your account available to others. Any distribution by you of your account or related information may result in suspension or deactivation of your account without refund or compensation to you, and the imposition of additional charges to your account based on any unauthorized use.

## **8. User Content & Unsolicited Submissions**

8.1 Certain aspects of the Services allow users to upload, transmit or post content ("Post"). By Posting content, including, without limitation, Virtual Items such as patterns and related data, materials, choosing a username, or participation in any chats or forums, you automatically grant us and our designees, or warrant that the owner of such content has expressly granted us and our designees, a nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable right to use, copy, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display content you Post throughout the world in any media. You also hereby grant each user of the Services a non-exclusive license to access content you Post, and to use, reproduce, distribute, display and perform such content, each in the manner contemplated by the Services and these Terms.

8.2 We have no obligation to monitor content Posted on the Services and we are not responsible for monitoring the Services for inappropriate or illegal content or conduct by other users. However, we retain the right, in our sole discretion, to edit, refuse to post, or remove any content. We may also, at our discretion, monitor and/or record your interaction with the Services or your communications with eTryOn or other users (including without limitation chat text and voice communications) when you are using the Services.

## **9. Confidentiality**

9.1 Confidentiality. In the course of providing the Software and/or Services to you under these Terms, including any presales communications or post-sales support, we and/or our Affiliates (the "Disclosing Party") may disclose or may have already disclosed to you and/or your Affiliates (the "Receiving Party") non-public information relating to the subject matter of these terms, which shall be considered to be the Disclosing Party's "Confidential Information"--whether disclosed or received, directly or indirectly, in oral, written, or any other format or media whatsoever. The Receiving Party agrees that it will take the same steps to protect the confidentiality of the Disclosing Party's Confidential Information as it takes to protect its own proprietary and confidential information. The Receiving Party shall protect and keep confidential and shall not use, publish or otherwise disclose to any third party, except as contemplated by this Agreement or with the Disclosing Party's prior written consent, the Disclosing Party's Confidential Information during and after the term of this Agreement. Licensee agrees and acknowledges that eTryOn may share Licensee's Confidential Information to third party contractors for the exclusive purpose of providing services to Licensee in relation to this Agreement; provided that eTryOn shall remain fully liable for acts and omissions of any such contractor in breach of this Agreement.

9.2 Remedies. The Receiving Party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the Disclosing Party, entitling the Disclosing Party to seek injunctive relief in addition to all legal remedies.

## **10. Copyright Notices & Complaints**

eTryOn respects the intellectual property of others, and we ask our users to do the same. eTryOn may, in appropriate circumstances and at its discretion, disable and/or terminate the accounts of users who may be repeat infringers. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide eTryOn's Copyright Agent the following information:

1. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
2. a description of the copyrighted work or other intellectual property that you claim has been infringed;
3. a description of where the material that you claim is infringing is located on the site;
4. your address, telephone number, and email address;

5. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
6. a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

eTryOn's Agent for Notice of claims of copyright or other intellectual property infringement can be reached on [etryon.project@gmail.com](mailto:etryon.project@gmail.com)

## **11. Electronic Communications**

11.1 When you use the Services or send emails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We may communicate with you by email (if provided by you) or by posting notices through the Services. You agree that all agreements, notices, disclosures and other communications that we provide you electronically satisfy any legal requirement that such communications be in writing.

11.2 Privacy and Use of Information; Connectivity. For Network Online Authentication licenses, you acknowledge and agree that: (i) when the Software is installed and connected to the Internet, eTryOn (and/or third parties acting on behalf of eTryOn) may automatically collect certain information and data from you including anonymized USER IDs, encrypted passwords, the specifications of hardware utilized by Authorized Users to access the Licensed Materials (HWIDs), and IP addresses ("Licensee Data"). The Licensee Data is used for purposes of user registration, activation, updating, validating, monitoring installation, providing technical support, and such other purposes reasonably necessary to monitor and maintain the Software and provide you with the Services. You hereby consent to eTryOn monitoring, maintaining, using, storing and disclosing such Licensee Data within the scope of these Terms--including the storage of Licensee Data in data-centers hosted by third party providers; and that certain aspects of the Software require access to and use of content and services that are hosted on websites maintained by eTryOn. Accessing such content or services and use of the Software will cause your computer, without additional notice, to connect automatically to the Internet and to communicate with eTryOn.

11.3 Activation and Security. Installation of the Software and access to the Services require, and the continued use thereof may from time to time require, remote authentication by eTryOn. You acknowledge and agree that installation of our services and/or software may be disabled by eTryOn protection mechanisms if you try to transfer all or a part of the our software to another computer, if you are not an authorized user, if you tamper with the technical protection mechanisms or date-setting mechanisms on a computer or in our software or if you undertake certain other actions that affect the security or under other circumstances and that, in any such event, your access to your work product and other data may be affected

## **12. Links**

The Services may contain links to websites operated by third parties. We do not monitor or control the linked sites and make no representations regarding, and are not liable or responsible for the accuracy, completeness, timeliness, reliability or availability of, any of the content uploaded, displayed, or distributed, or products, or services available at these sites. If you choose to access any third party site, you do so at your own risk. The presence of a link to a third party site does not constitute or imply our endorsement, sponsorship, or recommendation of the third party or of the content, products, or services contained on, or available through, the third party site. We reserve the right to disable links from or to third party sites. Your correspondence or dealings with the linked website or service providers are solely between you and such third parties, and eTryOn is neither responsible nor liable for any part of such dealings. Any charges you incur in relation to those third



parties are your responsibility. You understand that when you provide data to such third parties, you are providing it in accordance with their privacy policy (if any), and our Privacy Policy does not apply with respect to such data provided to the third parties.

### **13. eTryOn's Brand Marks**

Any trademarks, logos, web pages, screenshots, or other distinctive features of our Services and eTryOn software (collectively, the "Brand Marks") are copyrights, trademarks, service marks, trade dress and/or other intellectual property whether registered or unregistered owned by eTryOn, its licensors, or other providers of such material. Unless otherwise agreed in writing by eTryOn, nothing herein grants or should be deemed to grant to you any right, title or interest in or to the Brand Marks, ownership of which is retained by eTryOn and its suppliers, as applicable. Your use of the eTryOn Brand Marks shall insure to the sole benefit of eTryOn.

### **14. Term & Termination**

14.1 Your right to use the Services and Software are effective through the end of the applicable Subscription Term, or where a perpetual license is purchased, perpetually, unless earlier terminated pursuant to these Terms.

14.2 As between eTryOn and you, each of eTryOn or you may terminate these Terms and your license to the Services and/or Software if the other party is in breach of these Terms and fails to cure such breach within ten (10) calendar days after written notice of the breach; however, if you are in breach, eTryOn may terminate these Terms, and your license to the Services, Software, or Licensed Materials immediately, without further notice to you. You acknowledge and agree that eTryOn may assign or subcontract any of its rights or obligations under these Terms.

14.3 Upon termination, the licenses granted to you by eTryOn shall cease, you may not be able to access or retrieve any content associated with your account, and you will promptly remove the Software from your device.

14.4 If you terminate your account, you agree that we may keep your content on our servers for a reasonable time thereafter (for example, to enable you to renew a subscription or reactivate your account, if you so desire).

### **15. Disclaimers**

15.1 NEITHER eTryOn, ITS AFFILIATES, LICENSORS AND THIRD PARTY PROVIDERS, NOR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS (COLLECTIVELY, THE "eTryOn PARTIES"), MAKE ANY WARRANTY WHATSOEVER, INCLUDING, WITHOUT LIMITATION, (i) THAT OUR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; (ii) AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF OUR SERVICES; OR (iii) OR AS TO THE ACCURACY, RELIABILITY, QUALITY OR CONTENT OF ANY INFORMATION, SERVICE OR MERCHANDISE PROVIDED ON OR THROUGH OUR SERVICES

15.2 YOU EXPRESSLY AGREE THAT YOUR USE OF, OR INABILITY TO USE, OUR SERVICES IS AT YOUR SOLE RISK. eTryOn WILL HAVE NO LIABILITY WHATSOEVER AS A RESULT OF LOSS OR DAMAGE TO CONTENT, OR FAILURE TO STORE OR ENCRYPT CONTENT. OUR SERVICES AND ANY CONTENT APPEARING ON OUR SERVICES, INCLUDING USER CONTENT, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, eTryOn MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER TERMS OF ANY KIND, EITHER EXPRESS OR IMPLIED, ABOUT OUR SERVICES eTryOn DISCLAIMS ANY WARRANTIES OF TITLE OR IMPLIED WARRANTIES, CONDITIONS OR OTHER

TERMS OF NON-INFRINGEMENT, MERCHANTABILITY, QUIET ENJOYMENT OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THESE TERMS.

## **16. Limitation Of Liability**

16.1 In no event will any of the eTryOn parties be liable for any indirect, special, punitive, incidental, or consequential damages however caused, and under any theory of liability even if eTryOn was previously advised of the possibility of such damages.

16.2 The eTryOn parties do not endorse and are not responsible for the accuracy or reliability of any opinion, advice or statement, nor for any offensive, defamatory, obscene or illegal posting or conduct, on our services, including, without limitation, by anyone other than authorized etryon employees while acting in their official capacities.

## **17. Indemnification**

You agree to indemnify and hold eTryOn Parties harmless from any loss, liability, claim, or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Services or Software in violation of these Terms and/or any breach of your representations and warranties set forth above and/or if content you Post causes us to be liable to another.

## **18. Equitable Remedies**

You acknowledge that the rights granted and obligations made under these Terms to eTryOn are of a unique and irreplaceable nature, the loss of which shall irreparably harm eTryOn and which cannot be replaced by monetary damages alone. Accordingly, eTryOn shall be entitled to injunctive or other equitable relief (without the obligations of posting any bond or surety or proof of damages) in the event of any breach or anticipatory breach by you.

## **19. Publicity**

You grant eTryOn the right to use your company name and logo as a reference for marketing or promotional purposes on our website and in other public or private communications with our existing or potential customers, subject to your standard trademark usage guidelines as provided to us from time to time. eTryOn doesn't want to list users who don't want to be listed, so you may send us an email to [etryon.project@gmail.com](mailto:etryon.project@gmail.com) stating that it does not wish to be used as a reference and a reasonable period to stop the use.

## **20. Severability**

The provisions of these Terms are intended to be severable. If for any reason any provision of these Terms shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

## **21. Force Majeure**

We are not liable for any changes or problems out of our control, for example changes or problems caused by like natural disasters, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, network infrastructure failures, strikes, or shortages of transportation facilities, fuel, energy, labor or materials.

## **22. Notices**

We may notify you by posting(s) made within the Services, sending you an email or using other ways of communicating with you based on the contact information you provide to

us. Any notice to eTryOn required according to these Terms must be in writing and addressed to [etryon.project@gmail.com](mailto:etryon.project@gmail.com).

## **Appendix IV: Terms and Conditions: Magic Mirror, DressMeUp, Snapchat Lenses**

### **1. Binding Agreement**

1.1 These terms ("Terms") govern your use of the services and applications of eTryOn project, namely DressMeUp, Magic Mirror and SnapChat services, as well as other services that may be developed, modified, combined, and/or newly offered through our apps and website from time to time (collectively, "Services").

1.2 These Terms also govern your use of our apps that you download or that we include as part of our Services, including any related applications and documentation (collectively "eTryOn Software" or "Software").

1.3 By setting up an eTryOn account, by using our Services, by using or downloading eTryOn Software, or by clicking the "I accept" button (or its equivalent), you agree to these Terms. For the avoidance of doubt, if you set up an eTryOn account, use our Services, use or download our Software, or click the "I accept" button (or its equivalent) on behalf of an entity, organization, or Legal Entity, you represent and warrant that you are authorized to accept these Terms on behalf of such entity or organization--in which case "you" and "your" will refer to that entity or organization.

1.4 If at any point for any reason you do not agree to any portion of the then-current version of these Terms, our Privacy Policy, or any other eTryOn policy, rules or codes of conduct relating to your use of our Services, your license to use our Services shall immediately terminate and you must stop using our Services and promptly remove any eTryOn Software installed on your computer. eTryOn offers various Services and Software. As a result, additional terms or service requirements may apply. Additional terms will be available with the relevant Services or Software, and those additional terms become part of your agreement with us if you use those Services or Software.

1.5 Unless otherwise set forth in these Terms, to the extent these Terms conflict with any other eTryOn terms, policy, rules or codes of conduct, these Terms shall govern.

### **2. Definitions**

Unless otherwise defined in the main body of these Terms, capitalized terms used in these Terms are defined as follows:

2.1 "Affiliate" of a person or entity shall mean any entity Controlled by, under common Control with or under the Control of such person or entity. "Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of registered capital or voting securities, by Agreement or otherwise, and includes (i) ownership directly or indirectly of fifty percent (50%) or more of the shares or other equity interests in issue or registered capital of such entity, (ii) ownership, directly or indirectly of fifty percent (50%) or more of the voting power of such Person or (iii) the power directly or indirectly to appoint a majority of the members of the board of directors or similar governing body of such entity, and the terms "Controlled" and "Controlling" shall have correlative meanings.

2.2 "Authorized User" means the employees of Licensee who are under the control of and authorized by the Licensee to install or access the Licensed Materials.

2.3 "eTryOn Samples" means samples provided by eTryOn in the Licensed Materials, including, but not limited to, avatars, sample patterns and designs, modules for patterns and designs, and expressions of components and elements used in patterns and designs. eTryOn samples may be modified where such modifications are permitted by the intended functionality of the Licensed Materials.

2.4 “Legal Entity” or “entity” means any company, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, proprietorship, joint venture or other form of business organization. In the context of Academic Licenses, “Legal Entity” also means a Qualified Academic Institution.

2.5 “Licensed Materials” means the Services, the eTryOn Software, Supplemental Materials, and/or User Documentation, as applicable.

2.6 “Licensee” or “you” means:

2.6.1 In the context of Individual Licenses, either a single, natural person or a Legal Entity to which the Licensed Materials are exclusively licensed, otherwise meeting the eligibility criteria for an Individual License set forth in Section 3

2.6.2 In the context of Academic Licenses, a single Qualified Academic Institution to which the Licensed Materials are exclusively licensed, otherwise meeting the eligibility criteria for an Academic License set forth in Section 3.

2.6.3 In the context of Enterprise Licenses, a single Legal Entity to which the Licensed Materials are exclusively licensed, otherwise meeting the eligibility criteria for an Enterprise License set forth in Section 3.

2.7 “Modification” means any change by Licensee (but only to the extent permitted by the intended functionality of the Software and/or Supplemental Materials) to the substance of a eTryOn Sample or any change to the substance of the contents of a file containing a eTryOn Sample; and/or any new file that contains any part of a eTryOn Sample; all of which ensures that the eTryOn Sample is not the primary source of value. Modifications may not be made to Restricted eTryOn Samples.

2.8 “Open Source Software and Other Software” means the open source software and other software disclosed and referenced at <https://etryon-h2020.eu/software/>

2.9 “Restricted eTryOn Samples” means non-modifiable avatars (and each of their elements) and clothing and accessories included in the Licensed Materials, and any other Licensed Materials specified as “Restricted Licensed Materials” (or similar verbiage).

2.10 “Supplemental Materials” means materials, other than Software and related User Documentation that are distributed or made available by eTryOn for use with Software. Supplemental Materials include, without limitation, eTryOn Samples and Restricted eTryOn Samples.

2.11 “Update(s)” means any corrections, patches, maintenance, and/or replacement of a Software version with a new Software version as and when eTryOn deems such Update is necessary to correct errors, remove, add or improve functionalities, and/or add service packs.

2.12 “User Documentation” means the explanatory or instructional materials for Software or Supplemental Materials.

### **3. Equipment**

You must provide all equipment and software necessary to access our Services or Software. You are responsible for all internet fees, data fees, or mobile fees that you incur while accessing our Services or Software.

### **4. Changes to Terms & Our Services**

4.1 eTryOn reserves the right, at our discretion, to change or modify these Terms at any time. Although it is your responsibility to review these Terms from time to time for any changes, eTryOn will notify you of any revisions to these Terms by posting them at this location, and may provide other notice which may include by email or in-Service notice. If you do not agree to the revised Terms, you must stop using our Services. Your continued

use of our Services following any revision to these Terms signifies your assent to and acceptance of the revised Terms.

4.2 You agree that eTryOn retains the unfettered right to modify any aspect of our Services or Software. You acknowledge that eTryOn has been, is, and will be constantly making changes to our Services or Software. These changes include modifications to features, functions or abilities of any element of our Services or Software.

4.3 All descriptions, images, references, features, content, specifications, products and prices of products and services described or depicted on our Services or Software, are subject to change (including availability) at any time without notice.

## **5. Who Can Use Our Services**

We want our Service to be as open and inclusive as possible, but we also want it to be safe, secure, and in accordance with the law. So, we need you to commit to a few restrictions in order to be part of the eTryOn community.

- You must be at least 16 years old.
- You must not be prohibited from receiving any aspect of our Service under applicable laws or engaging in payments related Services if you are on an applicable denied party listing.
- You must not be a convicted sex offender.

## **6. How You Can't Use our Services**

Providing a safe and open Service for a broad community requires that we all do our part.

- You can't impersonate others or provide inaccurate information.
- You don't have to disclose your identity on eTryOn, but you must provide us with accurate and up to date information (including registration information). Also, you may not impersonate someone you aren't, and you can't create an account for someone else unless you have their express permission.
- You can't violate (or help or encourage others to violate) these Terms or our policies
- You can't attempt to create accounts or access or collect information in unauthorized ways.
- This includes creating accounts or collecting information in an automated way without our express permission.
- You can't attempt to buy, sell, or transfer any aspect of the content or solicit, collect, or use login credentials or content of other users.
- You can't post private or confidential information or do anything that violates someone else's rights, including intellectual property.

If you provide the images of the other people, it means that you have the rights to use them and provide for our usage and you take the full responsibility in case of any claims from the person on the photo that you used and provided for our usage.

## **7. Permissions You Give to Us.**

As part of our agreement, you also give us permissions that we need to provide the Service.

- We do not claim ownership of your content, but you grant us a license to use it.
- When you place an order or upload content that is covered by intellectual property rights (like photos or videos) on or in connection with our Service, you hereby grant to us a non-exclusive, royalty-free, transferable, sub-licensable, worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative

works of your content (consistent with your privacy and application settings). You can end this license anytime by providing the written notice to [etryon.project@gmail.com](mailto:etryon.project@gmail.com).

## **8. Unauthorized Activities**

8.1 You may use our Services and/or Software only for lawful purposes, in accordance with these Terms, and only in the manner contemplated by the functionalities of our Services and/or Software (in eTryOn's sole judgment).

8.2 Except as expressly authorized in these Terms or allowed by applicable law, you may not (i) use, copy, modify, reverse engineer, disassemble, decompile, modify, or transfer our Services or eTryOn Software, or otherwise attempt to derive the source code of our Services or eTryOn Software; (ii) translate, adapt, arrange, or create derivative works based on, or otherwise modify our Services or eTryOn Software or any elements thereof for any purpose; provided however you may make Modifications to eTryOn Samples where such Modifications are permitted by the intended functionality of our Services or eTryOn Software and such Modifications ensures that the eTryOn Sample is not the primary source of value; (iii) distribute eTryOn Samples as your work product without Modifications, (iv) distribute and/or make Modifications to Restricted eTryOn Samples; or authorize any third party to do any of the foregoing;

8.3 Any reproduction or redistribution of our Services or eTryOn Software is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible.

8.4 Without limiting our other remedies, we may limit, suspend, deactivate or terminate user accounts, prohibit access to all or any portion of our services, delay or remove user content, and take technical and legal steps to prevent you from accessing our services if we believe that you are creating risk or possible legal liabilities, infringing the intellectual property rights of third parties, or acting inconsistently with the letter or spirit of our terms or policies, with or without notice to you. You can lose your account as a result of account suspension, deactivation, or termination, as well as any benefits, privileges, items and purchased items associated with your use of our services, and etryon is under no obligation to compensate you for any such losses or results.

## **9. Accuracy, Completeness and Timeliness Of Information**

We are not responsible if information made available on this site is not accurate, complete or current. The material on this site is provided for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete or more timely sources of information. Any reliance on the material on this site is at your own risk. This site may contain certain historical information. Historical information, necessarily, is not current and is provided for your reference only. We reserve the right to modify the contents of this site at any time, but we have no obligation to update any information on our site. You agree that it is your responsibility to monitor changes to our site.

## **10. Registration, Usernames & Passwords**

10.1 In order to access some features of the Services, you may be required to register an account with us.

10.2 When creating or updating an account, you may be asked to provide us with certain personal information, which may include your e-mail address and other information that can be used to identify you. Such information, if provided to us, will be held and used in accordance with our Privacy Policy.

10.3 Notwithstanding anything herein to the contrary, you acknowledge and agree that you have no ownership or other property interest in the account, and you further

acknowledge and agree that all rights in and to the account are and shall be owned solely and exclusively by eTryOn.

10.4 You agree to (i) provide us with current, complete and accurate information as prompted by the applicable registration form, and (ii) maintain and promptly update the registration data to keep it true, complete, accurate and correct. If you provide any information that is untrue, inaccurate, not current or incomplete, eTryOn has the right to suspend or deactivate your account and refuse you from any and all current and future use of the Services (or any portion thereof).

10.5 When registering for an account, you will be asked to choose a password and username. You may not use a username that is used by someone else, is vulgar or otherwise offensive (as determined by eTryOn in its sole discretion), infringes any trademark or other rights of others, or is used in any way that violates these Terms. You are entirely responsible for maintaining the confidentiality and security of your account information (including usernames, passwords and billing information).

10.6 eTryOn will not be liable for any loss or damage that you may suffer as a result of someone else using your account, either with or without your knowledge. You will be liable for any and all losses incurred by eTryOn and/or any of its licensors due to someone else using your account. You may not use anyone else's account at any time. Your account is personal to you and you may not transfer or make your account available to others. Any distribution by you of your account or related information may result in suspension or deactivation of your account without refund or compensation to you, and the imposition of additional charges to your account based on any unauthorized use.

## **11. User Content & Unsolicited Submissions**

11.1 Certain aspects of the Services allow users to upload, transmit or post content ("Post"). By Posting content, including, without limitation, Virtual Items such as patterns and related data, materials, choosing a username, or participation in any chats or forums, you automatically grant us and our designees, or warrant that the owner of such content has expressly granted us and our designees, a nonexclusive, royalty-free, perpetual, irrevocable, and fully sublicensable right to use, copy, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display content you Post throughout the world in any media. You also hereby grant each user of the Services a non-exclusive license to access content you Post, and to use, reproduce, distribute, display and perform such content, each in the manner contemplated by the Services and these Terms.

11.2 We have no obligation to monitor content Posted on the Services and we are not responsible for monitoring the Services for inappropriate or illegal content or conduct by other users. However, we retain the right, in our sole discretion, to edit, refuse to post, or remove any content. We may also, at our discretion, monitor and/or record your interaction with the Services or your communications with eTryOn or other users (including without limitation chat text and voice communications) when you are using the Services.

## **12. User Comments, Feedback And Other Submissions**

If, at our request, you send certain specific submissions (for example contest entries) or without a request from us you send creative ideas, suggestions, proposals, plans, or other materials, whether online, by email, by postal mail, or otherwise (collectively, 'comments'), you agree that we may, at any time, without restriction, edit, copy, publish, distribute, translate and otherwise use in any medium any comments that you forward to us. We are and shall be under no obligation (1) to maintain any comments in confidence; (2) to pay compensation for any comments; or (3) to respond to any comments. We may, but have no obligation to, monitor, edit or remove content that we determine in our sole discretion are unlawful, offensive, threatening, libellous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property or these Terms of Service. You agree that your comments will not violate any right of any third-party,



including copyright, trademark, privacy, personality or other personal or proprietary right. You further agree that your comments will not contain libelous or otherwise unlawful, abusive or obscene material, or contain any computer virus or other malware that could in any way affect the operation of the Service or any related website. You may not use a false email address, pretend to be someone other than yourself, or otherwise mislead us or third-parties as to the origin of any comments. You are solely responsible for any comments you make and their accuracy. We take no responsibility and assume no liability for any comments posted by you or any third-party.

### **13. Prohibited Uses**

In addition to other prohibitions as set forth in the Terms of Service, you are prohibited from using the site or its content: (a) for any unlawful purpose; (b) to solicit others to perform or participate in any unlawful acts; (c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances; (d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others; (e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability; (f) to submit false or misleading information; (g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Service or of any related website, other websites, or the Internet; (h) to collect or track the personal information of others; (i) to spam, phish, pharm, pretext, spider, crawl, or scrape; (j) for any obscene or immoral purpose; or (k) to interfere with or circumvent the security features of the Service or any related website, other websites, or the Internet. We reserve the right to terminate your use of the Service or any related website for violating any of the prohibited uses.

### **14. Term & Termination**

14.1 Your right to use the Services and Software are effective through the end of the applicable Subscription Term, or where a perpetual license is purchased, perpetually, unless earlier terminated pursuant to these Terms.

14.2 As between eTryOn and you, each of eTryOn or you may terminate these Terms and your license to the Services and/or Software if the other party is in breach of these Terms and fails to cure such breach within ten (10) calendar days after written notice of the breach; however, if you are in breach, eTryOn may terminate these Terms, and your license to the Services, Software, or Licensed Materials immediately, without further notice to you. You acknowledge and agree that eTryOn may assign or subcontract any of its rights or obligations under these Terms.

14.3 Upon termination, the licenses granted to you by eTryOn shall cease, you may not be able to access or retrieve any content associated with your account, and you will promptly remove the Software from your device.

14.4 If you terminate your account, you agree that we may keep your content on our servers for a reasonable time thereafter (for example, to enable you to renew a subscription or reactivate your account, if you so desire).

### **15. Disclaimer Of Warranties; Limitation Of Liability**

We do not guarantee, represent or warrant that your use of our service will be uninterrupted, timely, secure or error-free. We do not warrant that the results that may be obtained from the use of the service will be accurate or reliable. You agree that from time to time we may remove the service for indefinite periods of time or cancel the service at any time, without notice to you. You expressly agree that your use of, or inability to use, the service is at your sole risk. The service and all products and services delivered to you through the service are (except as expressly stated by us) provided 'as is' and 'as available' for your use, without any representation, warranties or conditions of any kind,

either express or implied, including all implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, durability, title, and non-infringement. In no case shall MoreDash, our directors, officers, employees, affiliates, agents, contractors, interns, suppliers, service providers or licensors be liable for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, loss of data, replacement costs, or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise, arising from your use of any of the service or any products procured using the service, or for any other claim related in any way to your use of the service or any product, including, but not limited to, any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of the service or any content (or product) posted, transmitted, or otherwise made available via the service, even if advised of their possibility. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, our liability shall be limited to the maximum extent permitted by law.

#### **16. Indemnification**

You agree to indemnify and hold eTryOn Parties harmless from any loss, liability, claim, or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Services or Software in violation of these Terms and/or any breach of your representations and warranties set forth above and/or if content you Post causes us to be liable to another.

#### **17. Equitable Remedies**

You acknowledge that the rights granted and obligations made under these Terms to eTryOn are of a unique and irreplaceable nature, the loss of which shall irreparably harm eTryOn and which cannot be replaced by monetary damages alone. Accordingly, eTryOn shall be entitled to injunctive or other equitable relief (without the obligations of posting any bond or surety or proof of damages) in the event of any breach or anticipatory breach by you.

#### **18. Publicity**

You grant eTryOn the right to use your company name and logo as a reference for marketing or promotional purposes on our website and in other public or private communications with our existing or potential customers, subject to your standard trademark usage guidelines as provided to us from time to time. eTryOn doesn't want to list users who don't want to be listed, so you may send us an email to [etryon.project@gmail.com](mailto:etryon.project@gmail.com) stating that it does not wish to be used as a reference and a reasonable period to stop the use.

#### **19. Severability**

The provisions of these Terms are intended to be severable. If for any reason any provision of these Terms shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

#### **20. Force Majeure**

We are not liable for any changes or problems out of our control, for example changes or problems caused by like natural disasters, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, network infrastructure failures, strikes, or shortages of transportation facilities, fuel, energy, labor or materials.

#### **21. Changes To Terms Of Service**

You can review the most current version of the Terms of Service at any time at this page. We reserve the right, at our sole discretion, to update, change or replace any part of these Terms of Service by posting updates and changes to our website. It is your responsibility to check our website periodically for changes. Your continued use of or access to our website or the Service following the posting of any changes to these Terms of Service constitutes acceptance of those changes.

## **22. Notices**

We may notify you by posting(s) made within the Services, sending you an e-mail or using other ways of communicating with you based on the contact information you provide to us. Any notice to eTryOn required according to these Terms must be in writing and addressed to [etryon.project@gmail.com](mailto:etryon.project@gmail.com).