



## Data Processing Agreement pursuant to Art. 28 GDPR

*between*

**(Client)**

*and*

**Opentech Payment Services AG (Processor)**

**Mühlegasse 18**

**CH-6340 Baar**

# Change Control

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## 1. Contracted data processing

- (a) The Processor shall process personal data on behalf of the Client (**Contract Data**) in relation to the provision of the AutomatID service (**Services**).

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## 2. Object and term of the Agreement

- (a) Object, nature and purpose: The Processor will process personal data as necessary to provide the Services under the Agreement. The Processor does not sell the Client's personal data or the Client end users' personal data and does not share the end users' information with third parties for compensation or for those third parties' own business interests. All data processing activities are carried out exclusively within the EEA or in Switzerland. According to a decision of the European Commission of July 26, 2000, Switzerland has an adequate level of data protection.
- (b) Categories of personal data: The categories of subjects of the data processing include:
  - (i) Client Account Data: personal data that relates to the Client's relationship with the Processor, including the names and/or contact information of individuals authorized by the Client to access the Client's AutomatID account and billing information of individuals that the Client has associated with its AutomatID account.
  - (ii) Client Content:

- (1) content exchanged by means of use of the AutomatID Services, such as information included in NFC documents;
  - (2) data stored on the Client's behalf via the AutomatID Services such as communication logs
- (iii) Client Usage Data: data processed by AutomatID for internal technical purposes; including data used to trace the requests, such as date, time, anonymized device information and the type of communication; with the aim to optimize and maintain performance of the Services, and investigate and prevent system abuse.

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### **3. Duties of the Processor**

- (a) The Processor shall process personal data exclusively in accordance with the contractual provisions of this agreement, unless the Processor is legally obliged to further process the data. The Processor shall notify such obligations to the Client prior to processing, unless the law concerned prohibits such notification on the grounds of an important public interest (Art. 28 para. 3 sentence 2 letter a GDPR).
- (b) Unconditional compliance with the instructions of the Client shall in particular also apply with regard to the transfer of personal data to a third country or international organization, unless the Processor is obliged to do so by the law of the Union or of the Member State to which the Processor is subject. In such a case, the Processor shall inform the Client of these legal requirements prior to processing, unless the law concerned prohibits such notification for an important public interest.

- (c) The instructions are initially set out in the agreement and may subsequently be amended, supplemented or replaced by individual instructions in writing or in an electronic format (text form) by the Client to the Processor (individual instruction).
- (d) Oral instructions shall be confirmed immediately in writing or in text form.
- (e) The Processor shall not use the data provided for processing for any other purposes, in particular not for his own purposes. Copies or duplicates of the personal data shall not be made without the consent of the Client. This does not apply to technically necessary, temporary duplications, provided that an impairment of the data protection level agreed here is excluded.
- (f) The Processor strictly separates the data to be processed within the scope of this agreement from other data stocks.
- (g) In the context of data processing, the Processor shall observe the relevant general data protection regulations. The Processor confirms that the persons employed by him for data processing are familiar with the relevant provisions of data protection and this agreement. Corresponding training and sensitization measures shall be carried out at regular intervals.
- (h) The Processor declares in a legally binding manner that he has obligated all persons entrusted with the data processing to maintain confidentiality prior to commencement of the activity or that they are subject to an appropriate legal obligation to maintain confidentiality. In particular, the obligation of confidentiality of the persons entrusted with data processing shall remain in force even

after termination of their activities and end of their employment with the Processor.

- (i) The Processor shall support the Client to the extent necessary in granting the rights of the data subjects in accordance with Articles 12 to 22 GDPR. If a data subject sends a request directly to the Processor, the Processor will immediately forward the request to the Client. The Processor may only provide information to third parties or data subjects with the prior consent of the Client.
- (j) The Processor assists the Client in complying with the obligations set out in Articles 32 to 36 GDPR (data security measures, notification of violations of personal data protection to the supervisory authority, notification of the person affected by a violation of personal data protection, data protection impact assessment, prior consultation).
- (k) If the Client is subject to an inspection by supervisory authorities or other bodies, the Processor shall provide the Client with the necessary assistance to the extent that the order processing is affected.
- (l) The Processor shall inform the Client immediately if, in his opinion, an instruction issued violates legal regulations. The Processor is entitled to suspend the execution until the relevant instruction is confirmed or changed by the Client after verification to this end.
- (m) The Processor shall rectify or delete personal data from the contractual relationship or restrict its processing if the Client so requests and no legitimate interests of the Processor prevent this.

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**4. Obligations of the Processor after termination of the agreement (Art. 28 para. 3 sentence 2 letter g GDPR)**

- (a) Upon termination of the data processing, the Processor shall return all the personal data as well as copies thereof to the Client [or, alternatively] to delete them on the Client's behalf, unless an obligation to store the personal data exists under Union or Member State law. The return of the copies resp. the completion of the deletion process must be confirmed in writing.
- (b) If the Processor processes the data in a special technical format, he shall return the data after the termination of this agreement either in this format or, at the request of the Client, in the format in which he received the data from the Client or in another, common format.

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**5. Rights and Obligations of the Client**

- (a) The Client is entitled
  - (i) to check compliance with the technical and organizational measures taken by the Processor and with the obligations laid down in this agreement, either himself or through third parties on site to an appropriate extent. The persons entrusted with the inspection shall be granted access and insight by the Processor as far as necessary. The Processor shall provide the necessary information.
  - (ii) to carry out inspections at the Processor's premises without any avoidable disruption of his business operations and, except for

urgent reasons, after reasonable notice and during the business hours of the Processor.

- (b) The Client is obliged
  - (i) to ensure that the processing is lawful in accordance with Art. 6 para. 1 resp. Art. 9 para. 2 GDPR;
  - (ii) to ensure that the rights of the data subjects according to Articles 12 to 22 GDPR are respected. However, if only the Processor has the competence to respond to the requests, the Client will immediately forward the requests to him;
  - (iii) to submit instructions to the Processor in writing or in a documented electronic format, as a rule. Oral instructions shall be confirmed in writing or in a documented electronic format;
  - (iv) to inform the Processor immediately of any errors or irregularities in the examination of the order results;
  - (v) to treat all information of business secrets and data security measures of the Processor obtained within the scope of the contractual relationship as confidential. This obligation shall remain in force after the termination of this agreement.

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## 6. Data security

- (a) Security measures: The Processor shall implement the technical and organisational measures for the protection of the Contract Data.
- (b) Reporting of breaches: In the event of any specifically suspected or established data breaches affecting the Contract Data (including breaches pursuant to Article 4(12) GDPR where the GDPR is



applicable to the processing of the Contract Data), the Processor shall inform the Client without undue delay and shall under all circumstances provide the information required under [Article 33\(3\) GDPR](#) (which information may also be provided in stages, if it is not immediately available).

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## 7. Subcontractors

- (a) Subcontractors relations for the purposes of this provision refers to services related directly to the performance of the primary services. This does not include ancillary services which the Processor may make use of, such as telecommunication services, postal and transport services, maintenance and customer service or disposal of data storage media, nor other measures to ensure confidentiality, availability, integrity and resilience of the hardware and software of data processing systems, as long as no personal data of the controller is hereby affected. The Processor shall nevertheless be subject to the obligation of also affecting appropriate and legally valid contractual agreements and oversight measures to ensure data protection and the security of the Client's data when ancillary services are outsourced.

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## 8. Support

- (a) Data security etc.: The Processor shall provide reasonable support to the Client in relation to compliance with statutory duties to ensure an appropriate level of data security, to report data breaches and to carry out data protection impact assessments. The Processor shall inform the Client without undue delay in the event of any data breach in relation to Contract Data as soon as it becomes aware of the data breach.

- (b) Rights of data subjects: In the event that a data subject contacts the Processor in relation to his or her rights under data protection law (e.g. with a request for access or erasure), the Processor shall forward such request to the Client without undue delay. It shall provide support to the Client in relation to the processing of such requests, as well as in relation to reporting duties to the authorities. This shall include, as required, support in relation to the compilation of any necessary data and information.
- (c) Duty to report: Any controls and other actions taken by data protection authorities shall be reported to the Client without undue delay in the event that they concern the Contract Data or systems used to process the Contract Data.

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## 9. Reimbursement of costs

- (a) Each party shall bear its own costs arising in relation to the fulfilment of its duties and the provision of support under this Data Processing Agreement. There shall be no right to claim reimbursement from the other party.

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## 10. Contact

- (a) With respect to data protection issues the parties shall make their usual contact persons available.

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## 11. Liability

- (a) Reference is made to Art. 82 GDPR.

## Annex 1: Technical and organizational measures

### 1. Confidentiality (Art. 32 para. 1 lit. b GDPR)

- **Entry control**  
No unauthorized entry to the data processing facilities, e.g.: magnetic or chip cards, keys, electric door openers, plant security or gate attendant, alarm systems, video systems;
- **Access control**  
No unauthorized use of systems, e.g.: (secure) passwords, automatic locking mechanisms, two-factor authentication, encryption of data storage media;
- **Authorization control**  
No unauthorized reading, copying, alteration or deletion within the system, e.g.: authorization strategies and need-based access rights, access logging;
- **Separation control**  
Separate processing of data collected for different purposes, e.g. multi-client capability, sandboxing;
- **Pseudonymization (Art. 32 para. 1 lit. a GDPR; Art. 25 para. 1 GDPR)**  
Processing of personal data in such a manner that the data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is stored separately and is subject to appropriate technical and organizational measures;

### 2. Integrity (Art. 32 para. 1 lit. b GDPR)

- **Transfer control**  
No unauthorized reading, copying, alteration or deletion during electronic transmission or transport, e.g.: encryption, virtual private networks (VPNs), electronic signatures;
- **Input control**  
Determination of whether and by whom personal data has been entered into, modified in or deleted from data processing systems, e.g.: logging, document management;

### **3. Availability and resilience (Art. 32 para. 1 lit. b GDPR)**

- Availability control  
Protection against accidental or malicious destruction or loss, e.g.: backup strategy (online/offline; on-site/off-site), uninterruptible power supply (UPS), antivirus protection, firewall, reporting channels and emergency plans;
- Rapid recoverability (Art. 32 para. 1 lit. c GDPR);

### **4. Process for regularly testing, assessing and evaluating (Art. 32 para. 1 lit. d GDPR; Art. 25 para. 1 GDPR)**

- Data protection management;
- Incident response management;
- Data protection by design (Art. 25 para. 2 GDPR);
- Processing order control  
No data processing as a Processor for the purposes of Art. 28 GDPR without corresponding instructions from the Client, e.g.: clear contractual structure, formalized processing order management, strict selection of service provider, due diligence, follow-up checks.

## Annex 2: Subcontractors

The Client agrees that the Processor may use Subcontractors to fulfill its contractual obligation:

<b>Name of Subcontractor</b>	<b>Brief description of services</b>	<b>Where Contract Data is being processed (country)</b>	<b>Where Contract Data is being stored (country)</b>
Opentech Software Engineering srl	Miscellaneous OpenPay services on the basis of an outsourcing relationship governed by a contract with the Processor. Opentech Software Engineering srl provides IT Developments, Maintenance and System Operations	Italy	Italy
Amazon Web Services EMEA SARL	Provider of Opentech Software Engineering Srl for purposes of the management of infrastructural services outsourced to Amazon	Ireland	Ireland