

# **Agreement for the use of E-Transfer Software and Provision of Related Services**

## **THE AGREEMENT**

This agreement sets out the conditions upon which ETT will provide to the Client the use of its application software, and support, maintenance and hosting services. This Agreement will come into force upon signing by both parties and will remain in force until termination. The Agreement may be terminated at any time with the express written consent of both ETT and the client. In the event that either party commits a material breach of its obligations under this Agreement, and such breach is not remedied within 30 days from receipt of notice thereof provided by the non-breaching party, the non-breaching party has the right to immediately terminate this Agreement. In the event of bankruptcy, insolvency or a fundamental change in the nature of business one either party, the other party shall have the right to immediately terminate this Agreement by providing written notice to this effect. No agreement or document having as its purpose or effect the variation, extension or deletion of any of the printed terms and conditions of this Agreement will be binding unless annexed hereto and signed on behalf of both parties by an authorized signatory.

### **1. Notices**

All notices required or permitted under this Agreement will be in writing and delivered; by receipt-confirmed e-mail. All communications will be sent to the commercial addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section. Either party may change its address for notice under this Agreement by giving written notice to the other party.

### **2. Assignment**

Neither party may assign this agreement in part or as a whole without the written consent of the other.

### **3. Force Majeure**

Neither party shall be liable for any delay or failure to meet its obligations under this Agreement due to any cause outside its reasonable control including (without limitation) acts of God, war, riot, malicious acts of damage by a third party, civil commotion, industrial dispute or fire. In the event of force majeure conditions preventing either party from fulfilling their obligation under this Agreement over a period exceeding four weeks, then the Agreement may be terminated by either party giving written notice to the other of 14 days.

### **4. Non-Solicitation**

The Client and ETT agree that neither organization will attempt either directly or indirectly to solicit individuals working for the other organization and offer that individual a contract of employment or provision of services with the other.

## **5. Independent Contractors**

The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

## **6. Correspondence**

All correspondence between Client and ETT shall be solely through designated personnel of both companies.

## **7. Data Protection**

According to the current and applicable data protection regulations, Client is informed that the processing of the personal data contained within this agreement will be used to comply with the obligations arising from the provision of license for the use of its application software, and support, maintenance and hosting services subscribed between the Parties. The personal data will not be used for other purposes unless previously agreed by the Client. The Client shall exercise the rights to access, rectify, delete, oppose, export and limit the treatment recognized by the General Data Protection Regulation UE 2016/679, by contacting ETT using the contact information that is stated in the heading of this document.

The Client is aware that the provision of the services imply processing personal data on behalf of the Clients' customers, in these case, ETT will act as the Data Processor for the personal data controlled by the Client, whom is responsible as the Data Controller. Find the Data Processing Agreement attached to this document as Schedule I.

## **8. Other Resources**

Where resources other than the above are required by either organization from the other, then compensation to the affected party will be agreed in writing at that time, before the resource is engaged.

## **9. Entire Agreement**

This Agreement, including all schedules, exhibits or attachments attached hereto, contains the complete understanding and agreement of the parties and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of the parties.

## **10. Jurisdiction**

This Agreement is governed by the laws of Spain and both parties agree to any legal action or proceedings arising from this Agreement to be brought in the courts of the jurisdiction of the defendant.

Hereinafter collectively referred to as 'Parties' and individually 'Party',

Having regard to the fact that,

- i. the Controller may access to the personal data of various users (hereinafter: 'Data Subjects');
- ii. the Controller wants the Processor to execute certain types of processing in accordance with the ***Agreement for the use of E-Transfer Software and Provision of Related Services between the Parties*** concluded with the Processor (hereinafter: 'the Agreement');
- iii. the Processor has undertaken to comply with this Data Processing Agreement (hereinafter: 'the Data Processing Agreement') and to abide by the security obligations and all other aspects of the General Data Protection Regulation (hereinafter: 'GDPR');
- iv. the Parties, having regard to the provisions of article 28 of the General Data Protection Regulation UE 679/2016 (GDPR), wish to lay down their rights and duties in writing in this Data Processing Agreement,

Have agreed as follows,

**1. OBLIGATIONS ON DATA PROCESSOR:**

The Processor undertakes to process personal data on behalf of the Controller in accordance with the conditions subscribed in the Agreement. The processing will be executed exclusively within the framework of the Agreement, and for all such purposes as may be agreed to subsequently.

- a) The Processor shall refrain from making use of the personal data for any purpose other than as specified by the Controller. The Controller will inform the Processor of any such purposes which are not contemplated in this Data Processing Agreement.
- b) All personal data processed on behalf of the Controller shall remain the property of the Controller and/or the relevant Data Subjects. The Processor shall take no unilateral decisions regarding the processing of the personal data for other purposes, including decisions regarding the provision thereof to third parties and the storage duration of the data.
- c) The Processor will endeavor to take adequate technical and organizational measures against loss or any form of unlawful processing (such as unauthorized disclosure, deterioration, alteration or disclosure of personal data) in connection with the performance of processing personal data under this Data Processing Agreement.
- d) The Processor shall warrant compliance with the applicable laws and regulations, including laws and regulations governing the protection of personal data, such as the GDPR.
- e) In the event of a security leak and/or the leaking of data, as referred to in article 34a of the GDPR, the Processor shall, to the best of its ability, notify the Controller thereof with undue delay, after which the Controller shall determine whether or not to inform the Data Subjects and/or the

relevant regulatory authority(ies). This duty to report applies irrespective of the impact of the leak. The Processor will endeavor that the furnished information is complete, correct and accurate.

The duty to report includes in any event the duty to report the fact that a leak has occurred, including details regarding:

- the (suspected) cause of the leak;
- the (currently known and/or anticipated) consequences thereof;
- the (proposed) solution;
- The measures that have already been taken.

f) Keep in writing a record of the categories of treatment activities carried out on behalf of the person in charge.

g) Not to communicate, disclose or transfer the personal data in its custody to third parties, not even for its conservation, unless it has the express authorization of the Controller.

The Processor may communicate the data to other data processors, in accordance to the instructions of the Controller. In this case, the Controller will identify, in advance and in writing, the entity to which the data must be communicated, the data to be communicated and the security measures to be applied in order to proceed with the communication.

h) Guarantee the adequate training in data protection of the employees authorized to process personal data.

Where a Data Subject submits a request to the Processor to inspect, or to improve, add to, change or protect their personal data, the Processor will forward the request to the Controller and the request will then be dealt with by the Controller. The Processor may notify the Data Subject hereof.

## **2. DETAILS OF PROCESSING OF PERSONAL DATA**

This provision includes certain details of the Processing of Personal Data as required by Article 28 GDPR.

1. The subject matter and duration of the Processing of the Personal Data are set out in the Agreement.
2. The nature and purpose of the Processing of Personal Data are set out in the Principal Agreement and this Data Protection Agreement.
3. The types of Personal Data to be processed:
  - IP address (device and connection)
  - MAC address of the device
  - Connection log including: date and time of the connection, duration and room number.
  - Fingerprinting: O.S. of the device, web browser used, Streaming service used.
4. The categories of Data Subject to whom the Personal Data relates: OtrumCast Users.

### **3. ENGAGING SUBCONTRACTORS**

The Processor is authorized within the framework of the Agreement to engage Subprocessors.

The Subprocessor' means any processor engaged by the Data Processor or by any other Subprocessor of the Data Processor who agrees to receive from the Data Processor personal data exclusively intended for processing activities to be carried out on behalf of the Data Controller after the transfer in accordance with his instructions, the terms of the Agreement and the terms of this Data Protection Agreement;

The Processor shall in any event ensure that such Subprocessors will be obliged to agree in writing to the same duties that are agreed between the Controller and the Processor.

The Processor nor the Subprocessors will not transfer, and will ensure that any subcontractor does not transfer, Controller's Personal Data out of the country in which it is provided to the Processor, except (a) between member states of the European Economic Area ("EEA"); (b) to a country which provides adequate safeguards, either with the Privacy Shield or the 19 countries taking part in mutual recognition by the European Authorities; or (c) on the written instructions of the Controller.

### **4. INTERNATIONAL TRANSMISSION OF PERSONAL DATA**

The Processor works with providers which servers are located in the European Economic Area.

The Processor shall only process the personal data in countries outside the European Economic Area provided that such country guarantees an adequate level of protection and it satisfies the other obligations applicable to it pursuant to this Data Processing Agreement and the GDPR.

Authorized transfers:

| <b>Purpose</b>                            | <b>Country</b>           |
|---|--------------------------|
| Software license, hosting and maintenance | The Netherlands          |
| Communication, marketing, analytics       | Ireland, England, France |

### **5. DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION**

Data Processor shall provide reasonable assistance to Data Controller with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities.

## **6. LIABILITY:**

The parties agree that a Data Subject who has suffered damage as a result of any violation of the provisions of this data processing agreement is entitled to receive compensation for the damage suffered. The parties agree that they may be exempted from this liability only if they prove that neither of them is responsible for the violation of those provisions.

The parties agree that if one party is held liable for a violation referred to any provisions arisen from this agreement by the other party, the latter will, to the extent to which it is liable, indemnify the first party for any cost, charge, damages, expenses or loss it has incurred.

The Processor shall only be responsible for processing the personal data in accordance with the Controller's instructions and under the responsibility of the Controller. If the Processor infringes this Agreement by determining the purposes and means of processing, the processor shall be considered to be a Controller in respect of that processing.

Controller represents and warrants that it has express consent and/or a legal basis to process the relevant personal data. Furthermore, the Controller represents and warrants that the contents are not unlawful and do not infringe any rights of a third party. In this context, the Controller indemnifies the Processor of all claims and actions of third parties related to the processing of personal data without express consent and/or legal basis under this Data Processing Agreement.

## **7. DELETION OR RETURN OF CONTROLLER PERSONAL DATA**

Data Processor shall promptly and in any event within the date of cessation of the services involving the Processing of Controller Personal Data (the "Cessation Date"), delete and procure the deletion of all copies of those Personal Data.

Data Processor and each Subprocessor may only retain Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that Data Processor shall ensure the confidentiality of all such Personal Data and shall ensure that such Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.

## **8. APPLICABLE LAW AND JURISDICTION**

The Data Processing Agreement and the implementation thereof will be governed by Spanish law. Any dispute arising between the Parties in connection with and/or arising from this Data Processing Agreement will be referred to the competent Spanish court in the district where the Controller has its registered office.

In the case of any inconsistency between documents and the appendices thereto, the following order of priority will apply:

1. the Agreement;
2. this Data Processing Agreement;
3. Additional conditions, where applicable.

IN WITNESS WHEREOF, the Parties have caused this Data Processing Agreement to be executed by their duly authorized representatives.

**E TRANSFER TECHNOLOGIES SPAIN**

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**By signing this Agreement document, I confirm that I read and agree to abide by your Terms and Conditions as published on your website.**

**Details**

Name, Surname

Signature

Date

**Agreement Document:**

Please print and sign and scan the Agreement Document, initial each page and send to

[software@ett-global.com](mailto:software@ett-global.com)