



# GDPR – Partner Terms and Conditions



## Introduction

This Data Processing Addendum (“DPA”) forms part of the Master Subscription Agreement or other written or electronic agreement between OEM and Partner for the mutual processing of online channel management services to reflect the parties’ agreement with regard to the Processing of Personal Data.

By signing the Agreement, Customer enters into this DPA on behalf of itself and, to the extent required under applicable Data Protection Laws and Regulations, in the name and on behalf of its Authorized Affiliates, if and to the extent OEM processes Personal Data for which such Authorized Affiliates qualify as the Controller. For the purposes of this DPA only, and except where indicated otherwise, the term “Customer” shall include Customer and Authorized Affiliates. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

In the course of providing the Services to Customer pursuant to the Agreement, ZINFI may Process Personal Data on behalf of the Partner, and the Parties agree to comply with the following provisions with respect to any Personal Data, each acting reasonably and in good faith.

## Application

If the Partner entity signing this DPA is a party to the Agreement, this DPA is an addendum to and forms part of the Agreement. In such case, the ZINFI entity that is party to the Agreement is party to this DPA.

This DPA shall not replace any comparable or additional rights relating to Processing of Customer Data contained in Customer’s Agreement (including any existing data processing addendum to the Agreement).

## Definitions

“**Controller**” means the entity which determines

the purposes and means of the Processing of Personal Data. In our case, “**The Partner.**”

“**Customer Data**” means what is defined in the Agreement as “Customer Data,” or “Your Data.”

“**Data Protection Laws and Regulations**” means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, applicable to the Processing of Personal Data under the Agreement.

“**Data Subject**” means the individual to whom Personal Data relates.

“**GDPR**” means the Regulation (EU) 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).

“**Personal Data**” means any information relating to (i) an identified or identifiable natural person and, (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws and Regulations), where for each (i) or (ii), such data is Customer Data.

“**Processing**” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction. “**Processor**” means the entity which Processes Personal Data on behalf of the Controller. In our case, “**ZINFI UCM**”.

“**Supervisory Authority**” means an independent



public authority which is established by an EU Member State pursuant to the GDPR.

## Processing of Data

**The rights and obligations of the Controller (the Partner)** with respect to this Processing are described herein.

Controller shall, in its use of the Services, at all times Process Personal Data, and provide instructions for the Collection and Processing of Personal Data, in compliance with EU Directive 95/46/EC (the "Directive"), and, when effective, the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR" and together, "Data Protection Laws").

Controller shall ensure that its instructions comply with all laws, rules and regulations applicable in relation to the Personal Data, and that the Collection and Processing of Personal Data in accordance with Controller's instructions will not cause Processor to be in breach of the Data Protection Laws.

Controller is solely responsible for the collection, accuracy, quality and legality of

- (i) the Personal Data provided to Processor by or on behalf of Controller,
- (ii) the means by which Controller acquired any such Personal Data, and
- (iii) the instructions it provides to Processor regarding the Processing of such Personal Data.

Controller shall not provide or make available to Processor any Personal Data in violation of the Agreement or otherwise inappropriate for the nature of the Services, and shall indemnify Processor from all claims and losses in connection therewith. GDSVF&H\2970684.9 3

Processor shall Process Personal Data only

- (i) for the purposes set forth in the Agreement,
- (ii) in accordance with the terms and conditions set forth in this Addendum and any other documented instructions provided by Controller, and
- (iii) in compliance with the Directive, and, when effective, the GDPR.

Controller hereby instructs Processor to Process Personal Data for the following purposes as part of any Processing initiated by Controller in its use of the Services.

The subject matter, nature, purpose, and duration of this Processing, as well as the types of Personal Data collected and categories of Data Subjects, are described in **Exhibit A to this Terms and Conditions**.

Following completion of the Services, at Controller's choice, Processor shall return or delete the Personal Data, except as required to be retained by the laws of the European Union or European Union member states.

## Authorized Employees

The Partner (Collector) shall take commercially reasonable steps to ensure the reliability and appropriate training of any Authorized Employee for collection of data with valid consent as per laws laid by GDPR.

The Partner (Collector) shall ensure that all Authorized Employees are made aware of the confidential nature of Personal Data and have executed confidentiality agreements that prevent them from disclosing or otherwise Processing, both during and after their engagement with Processor, any Personal Data except in accordance with their obligations in connection with the Services.

The Partner (Collector) with the Processor shall take reasonable steps to limit access to Personal Data to only Authorized Individuals.

### Security of Personal Data

Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Collecting Personal Data with the Individual's Consent as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, The Collector in accordance with the Processor shall maintain appropriate technical and organizational measures to ensure a level of security appropriate to the risk of Collection and Processing Personal Data.

**Data Protection Office** – The Controller will maintain a data protection office to comply to GDPR and maintenance of Personal Data. The DPO will liaison with the Processor's DPO and set up Data Breach Incidence Teams and Policies.

### Transfers of Personal Data

Any transfer of Personal Data made subject to this Addendum from member states of the European Union, Iceland, Liechtenstein, Norway, Switzerland or the United Kingdom to any countries which do not ensure an adequate level of data protection within the meaning of the laws and regulations of these countries shall, to the extent such transfer is subject to such laws and regulations, be undertaken by Processor on behalf of the Controller through one of the following mechanisms:

- (a) in accordance with the Swiss-U.S. and EU-U.S. Privacy Shield Framework and Principles issued by the U.S. Department of Commerce, both available at [GDSVF&H\2970684.9 4 https://www.privacyshield.gov/EU-US-Framework](https://www.privacyshield.gov/EU-US-Framework) (the "Privacy Shield Principles").

- (b) the Standard Contractual Clauses set forth in **Exhibit B** to this Addendum.

The Data Controller and Processor self-certify to, and complies with, the Swiss-U.S. and EU-U.S. Privacy Shield Frameworks, as administered by the U.S. Department of Commerce, and shall maintain such self-certification and compliance with respect to the Processing of Personal Data transferred from member states of the European Union, Iceland, Lichtenstein, Norway, Switzerland or the United Kingdom to any countries which do not ensure an adequate level of data protection within the meaning of the laws and regulations of the foregoing countries for the duration of the Agreement.

### Rights of Data Subjects

Controller shall, to the extent permitted by law, promptly notify Processor upon receipt of a request by a Data Subject to exercise the Data Subject's right of: access, rectification, restriction of Processing, erasure, data portability, restriction or cessation of Processing, withdrawal of consent to Processing, and/or objection to being subject to Processing that constitutes automated decision making (such requests individually and collectively "Data Subject Request(s)").

Processor shall, at the request of the Controller, and taking into account the nature of the Processing applicable to any Data Subject Request, apply appropriate technical and organizational measures to assist Controller in complying with Controller's obligation to respond to such Data Subject Request and/or in demonstrating such compliance, where possible, provided that

- (i) Controller is itself unable to respond without Processor's assistance and
- (ii) Processor is able to do so in accordance with all applicable laws, rules, and regulations.

Controller shall be responsible to the extent legally permitted for any legal entrustments arising from any such assistance by Processor.

### Actions and Access Requests

The Collector shall, taking into account the nature of the Collection and Processing and the information available to Processor, provide Controller with reasonable cooperation and assistance where necessary for Controller to comply with its obligations under the GDPR to conduct a data protection impact assessment and/or to demonstrate such compliance, provided that Controller does not otherwise have access to the relevant information. Controller shall be responsible to the extent legally permitted for any costs and expenses arising from any such assistance by Processor.

Controller shall, taking into account the nature of the Processing and the information available to Processor, provide Processor with reasonable cooperation and assistance with respect to Processor's cooperation and/or prior consultation with any Supervisory Authority, where necessary and where required by the GDPR. Controller shall be responsible to the extent legally permitted for any costs and expenses arising from any such assistance by Processor.

Controller and Processor shall maintain records sufficient to demonstrate its compliance with its obligations under this Addendum, and retain such records for a period of three (3) years after the termination of the Agreement. Controller shall, with reasonable notice to Processor, have the right to review, audit and copy such records at Processor's offices during regular business hours.

Upon Controller's request and at Controller's choice, Processor shall, no more than [once per calendar year], either

- (i) make available for Controller's review copies of certifications or reports demonstrating Processor's compliance with prevailing data security standards applicable to the Processing of Controller's Personal Data, or
- (ii) allow Controller or its authorized representative, upon reasonable notice and at a mutually agreeable date and time, to conduct an audit or inspection of Processor's data security infrastructure that is sufficient to demonstrate Controller's compliance with its obligations under this Addendum.

In the event of a Personal Data Breach, Processor shall, without undue delay, inform Controller of the Personal Data Breach and take such steps as Processor in its sole discretion deems necessary and reasonable to remediate such violation (to the extent that remediation is within Processor's reasonable control).

In the event of a Personal Data Breach, Processor shall, taking into account the nature of the Processing and the information available to Processor, provide Controller with reasonable cooperation and assistance necessary for Controller to comply with its obligations under the GDPR with respect to notifying

- (i) the relevant Supervisory Authority and
- (ii) Data Subjects affected by such Personal Data Breach without undue delay.

### Limitation of Liability

The total liability of each of Controller and Processor (and their respective employees, directors, officers, affiliates, successors, and assigns), arising out of or related to this Addendum, whether in contract, tort, or other theory of liability, shall not, when taken together in the aggregate, exceed [amount] [the limitation of liability set forth in the Agreement].

## Exhibit A

### Details of Collection and Consent related to and Processing Nature and Purpose of Personal Data

**Processing:** [refer to Agreement OR describe in detail]

**Duration of Processing:** [term of Agreement OR other]

**Categories of Data Subjects:** [Controller end-users/customers AND/OR Controller employees AND/OR other]

**Type of Personal Data:** [elements of Personal Data collected]

## Exhibit B

### Standard Contractual Clauses

For the transfer of personal data to processors established in Non-EU countries, and may not ensuring an adequate level of data protection the following form needs to be properly completed:

Name of the data exporting organisation:  
[Controller, Inc.]

Address: [insert]

Tel.: [insert]; fax: [insert]; e-mail: [insert]

Other information needed to identify the organisation: [if needed; otherwise "not applicable"]

\_\_\_\_\_ (the data exporter)

And Name of the data importing organisation:  
[Processor, Inc.]

Address: [insert]

Tel.: [insert]; fax: [insert]; e-mail: [insert] Other information needed to identify the organisation: [if needed; otherwise "not applicable"]

\_\_\_\_\_ (the data importer)

each a "party"; together "the parties,"

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified.

## Clauses

### Clause 1 - Definitions For the purposes of the Clauses:

- (a) "personal data," "special categories of data," "process/processing," "controller," "processor," "data subject" and "supervisory authority" shall have the same meaning as in 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 on the free movement of such data;
- (b) "the data exporter" means Controller;
- (c) "the data importer" means Processor;
- (d) "the applicable data protection law" means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (e) "technical and organisational security measures" means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

### Clause 2 - Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable forms an integral part of the Clauses.

### Clause 3 - Third-party beneficiary clause

1. The data subject can enforce against the data importer this Clause, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
2. The data subject can enforce against the processor this Clause, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter.
3. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

### Clause 4 - Liability

1. The parties agree that any data subject who has suffered damage as a result of any breach of the obligations by any party, the data controller; is primarily entitled to provide compensation to the data subject for the damage suffered as per instructions from the supervising authority.
2. If a data subject is not able to bring a claim for compensation against the data exporter, arising out of a breach by the data importer; because the data exporter has factually disappeared or ceased to exist in law or has become insolvent,

the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

### Clause 5 - Mediation and jurisdiction

1. The data collector and processor agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data collector and processor will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

### Clause 6 - Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing

the conduct of an audit of the data importer, or any subprocessor. In such a case, the data exporter shall be entitled to take the respective measures.

### Clause 7 - Governing Law

The Clauses shall be governed by the law of the Member State in which the data Subject is established, namely [insert].

### Clause 8 - Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business-related issues where required as long as they do not contradict the Clause.

### Clause 9 - Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the controller and/or the data processor on behalf of the data controller as per the Agreement delete all the personal data transferred and the copies thereof and shall destroy all the personal data and certify to the data subject that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data collector warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The Data Collector warrants that upon request of the data subject and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures.

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter The data exporter is (please specify briefly your activities relevant to the transfer):

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Data importer The data importer is (please specify briefly activities relevant to the transfer):

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Data subjects The personal data transferred concern the following categories of data subjects (please specify):

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Categories of data The personal data transferred concern the following categories of data (please specify):

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Special categories of data (if appropriate) The personal data transferred concern the following special categories of data (please specify):

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Processing operations The personal data transferred will be subject to the following basic processing activities (please specify):

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## Contact Us

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