

# DATA PROCESSING ADDENDUM

## 1 APPLICATION OF THIS ADDENDUM

Subject to clause 1.2, this Data Processing Addendum (**Addendum**) applies if the Processing (as defined below) of Data (as defined in our Terms and Conditions at <https://onlyfromnz.co.nz/marketplace-terms-and-conditions/> (**Terms & Conditions**)) is governed by the GDPR (as defined below).

- 1.1 If this Addendum applies, this Addendum forms part of the Terms between us and you (as defined in the Terms) and sets out the parties' agreement in relation to the processing of Data in accordance with the requirements of European Union data protection laws and regulations.
- 1.2 We are located in New Zealand, which the European Commission has determined adequate protection within the meaning of Article 45 of the GDPR.
- 1.3 Except as varied in this Addendum all terms and conditions set out in the Terms continue to apply.

## 2 INTERPRETATION

2.1 Unless the context requires otherwise:

- a capitalised terms used, but not defined, in this Addendum will have the meanings given to them in the GDPR (or, if not defined in the GDPR, the Terms);
- b the rules of interpretation set out in the Terms apply to this Addendum; and
- c references to *clauses* are references to the clauses in this Addendum.

2.2 In this Addendum:

*Applicable Data Protection Laws* means EU Data Protection Laws and any applicable data protection or privacy laws of any other country

*EEA* means the European Economic Area

*EU Data Protection Laws* means all laws and regulations, including laws and regulations of the European Union, the EEA and their member states and (if the United Kingdom ceases to be a member state) the United Kingdom, that apply to the Processing of Data under the Terms, including (where applicable) the GDPR

*GDPR* means the European Union General Data Protection Regulation 2016/679

*Instruction* means the instructions set out in clause 3.3 or agreed under clause 3.4

*Personal Data* means all Data which is personal data, personally identifiable information or personal information under Applicable Data Protection Laws (as applicable under those laws)

*Processing* means any operation or set of operations which is performed upon Personal Data, whether or not by automated means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction. *Process* has a consistent meaning

*Sub-Processor* means any person appointed by us or on our behalf to Process Personal Data on your behalf in connection with the Terms

2.3 If there is any conflict between any of the following, they will have precedence in the descending order of priority set out below:

- a this Addendum; and
- b the Terms.

### **3 PROCESSING OF PERSONAL DATA**

3.1 With respect to the Processing of Personal Data under the Terms:

- a you act as the Data Controller;
- b we act as the Data Processor; and
- c subject to clause 6, we may engage the Sub-Processors listed in Schedule 2.

3.2 We will comply with all Applicable Data Protection Laws that apply to our Processing of Personal Data on your behalf, including all EU Data Protection Laws that apply to Data Processors.

3.3 You must, when using the Marketplace, comply with all Applicable Data Protection Laws that apply to your Processing of Personal Data, including all EU Data Protection Laws that apply to Data Controllers.

3.4 You instruct us to Process Personal Data and in particular, subject to clause 6, transfer Personal Data to any country or territory:

- a as reasonably necessary to provide the Marketplace in accordance with the Terms;
- b as initiated through the use of the Marketplace by you, your Personnel and other end users you allow to use the Marketplace; and
- c to comply with any further instruction from you (including by email or through our support channels) that is consistent with the Terms and this Addendum.

- 3.5 This Addendum and the Terms are your complete and final instructions for the Processing of Personal Data as at the time this Addendum takes effect. Any additional or alternate instructions must be agreed between us and you separately in writing.
- 3.6 We will not Process Personal Data other than on your Instructions unless required by any law to which we are subject, in which case we will to the extent permitted by applicable law inform you of that legal requirement before we Process that Personal Data.
- 3.7 As required by article 28(3) of the GDPR (and, if applicable, equivalent requirements of other Applicable Data Protection Laws), the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this Addendum are set out in Schedule 1. We may amend Schedule 1 from time to time on written notice to you as we reasonably consider necessary to meet the requirements of the GDPR (and applicable equivalent requirements of other Applicable Data Protection Laws).
- 3.8 The duration of Processing is limited to the duration of the Terms. Our obligations in relation to Processing will continue until the Personal Data has been properly deleted or returned to you in accordance with clause 11 of this Addendum.
- 3.9 You are solely responsible for ensuring that your Instructions comply with Applicable Data Protection Laws. It is also your responsibility to enter into data processing agreements with other relevant Data Controllers in order to allow us and our Sub-Processors to Process Personal Data in accordance with this Addendum.
- 3.10 If, in our reasonable opinion, an Instruction infringes Applicable Data Protection Laws, we will notify you as soon as reasonably practicable.

#### **4 DATA SUBJECT REQUESTS**

- 4.1 To the extent permitted by law, we will notify you promptly if we receive a request from a Data Subject to exercise the Data Subject's rights under Applicable Data Protection Laws relating to any Personal Data (**Data Subject Request**).
- 4.2 Taking into account the nature of the Processing, we will assist you by implementing appropriate technical and organisational measures, to the extent possible, to fulfil your obligation to respond to a Data Subject Request under Applicable Data Protection Laws.
- 4.3 To the extent you do not have the ability to address a Data Subject Request, we will, on your written request, provide reasonable assistance in accordance with Applicable Data Protection Laws to facilitate that Data Subject Request. You will reimburse us for the costs arising from this assistance.
- 4.4 We will not respond to a Data Subject Request except on your written request or if required by applicable law.

## 5 OUR PERSONNEL

- 5.1 We will:
- a take reasonable steps to ensure the reliability of any of our Personnel engaged in the Processing of Personal Data;
  - b ensure that access to Personal Data is limited to our Personnel who require that access as strictly necessary for the purposes of exercising our rights and performing our obligations under the Terms;
  - c ensure that our Personnel engaged in Processing Personal Data are subject to confidentiality undertakings or professional or statutory obligations of confidentiality; and
  - d ensure that our Personnel engaged in Processing Personal Data are informed of the confidential nature of the Personal Data and receive appropriate training on their responsibilities.
- 5.2 We have appointed a data protection officer who can be contacted at [info@onlyfromnz.co.nz](mailto:info@onlyfromnz.co.nz). Please include *Attn: OFNZ Data Protection Officer* in the email *Subject* field.

## 6 SUBPROCESSORS

- 6.1 You acknowledge and agree that we may engage third party Sub-Processors in connection with the provision of the Marketplace.
- 6.2 We have entered into (and will, for any new Sub-Processor, enter into) written agreements with each Sub-Processor containing data protection obligations which offer at least the same level of protection for Personal Data as set out in this Addendum and that meet the requirements of Article 28(3) of the GDPR, as applicable to the nature of the services provided by that Sub-Processor.
- 6.3 You may request copies of our written agreements with Sub-Processors (which may be redacted to remove confidential information not relevant to this Addendum).
- 6.4 A list of current Sub-Processors for the Marketplace as at 6 August 2021 is set out in Schedule 2. We may update the list of Sub-Processors from time to time and, subject to clause 6.5, we will give at least 30 days' written notice of any new Sub-Processor.
- 6.5 We may engage Sub-Processors as needed to serve as an Emergency Replacement to maintain and support the Marketplace. *Emergency Replacement* means a sudden replacement of a Sub-Processor where a change is outside our reasonable control. In this case, we will inform you of the replacement Sub-Processor as soon as reasonably practicable.
- 6.6 If you object to any new Sub-Processor, you may, despite anything to the contrary in the Terms, terminate these Terms and your right to access and use the Marketplace without penalty on written

notice, provided (in the case of a new Sub-Processor notified under clause 6.4) your notice of termination is received by us before the effective date of our notice under clause 6.4 or (in the case of a new Sub-Processor notified under clause 6.5) your notice of termination is received by us within 30 days of our notice of the new Sub-Processor. If you do not terminate these Terms and your right to access and use the Marketplace in accordance with this clause, you are deemed to have agreed to the new Sub-Processor.

- 6.7 We are liable for the acts and omissions of our Sub-Processors to the same extent we would be liable if performing the services of each Sub-Processor directly under the terms of this Addendum, except as otherwise set out in this Addendum.

## **7 SECURITY**

We will maintain technical and organisational measures to protect the confidentiality, integrity and security of Personal Data (including protection against unauthorised or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorised disclosure of, or access to, Personal Data), and to manage data security incidents affecting Personal Data, in accordance with Applicable Data Protection Laws.

## **8 SECURITY BREACH MANAGEMENT**

- 8.1 We will comply with all applicable laws requiring notification to you of any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data Processed by us or our Sub-Processors of which we become aware (**Breach Incident**).
- 8.2 We will make reasonable efforts to identify the cause of that Breach Incident, notify you within a timely manner to allow you to meet your obligations to report a Breach Incident, and take steps we consider necessary and reasonable to remediate the cause of the Breach Incident, to the extent remediation is within our reasonable control.

## **9 AUDIT AND COMPLIANCE**

Upon your written request, we will submit to your audits and inspections, and provide you all information necessary, to demonstrate that both you and we are complying with our respective obligations under Applicable Data Protection Laws (including our respective obligations under Article 28 of the GDPR).

## **10 DATA PROTECTION IMPACT ASSESSMENT**

Upon your written request, we will provide you with reasonable assistance needed to fulfil your obligation under the GDPR to carry out a data protection impact assessment relating to your use of the Marketplace, to the extent you do not otherwise have access to the relevant information.

## **11 RETURN AND DELETION OF PERSONAL DATA**

- 11.1 Subject to clauses 11.2 and 11.3, following termination of the Terms we will delete all Personal Data within a reasonable period from termination of the Terms.
- 11.2 Subject to clause 11.3, you may submit a written request to us within 10 working days of the termination of the Terms requiring us, within 20 working days of your written request, to:
- a return a complete copy of all Personal Data by secure file transfer in a common format; and
  - b delete all other copies of Personal Data Processed by us or any Sub-Processor.
- 11.3 We, or each Sub-Processor, may retain Personal Data to the extent that it is required by applicable laws, provided that we ensure the confidentiality of all such Personal Data and ensure that such Data is only processed as necessary for the purposes required under applicable laws requiring its Processing and for no other purpose.
- 11.4 If we cannot delete all Personal Data due to technical reasons, we will inform you as soon as reasonably practicable and will take reasonably necessary steps to:
- a come as close as possible to a complete and permanent deletion of the Personal Data;
  - b fully and effectively anonymise the remaining data; and
  - c make the remaining Personal Data which is not deleted or effectively anonymised unavailable for future Processing.

## **12 CHANGES IN DATA PROTECTION LAWS**

- 12.1 We may on at least 30 days' written notice to you from time to time, make any variations to this Addendum, which we consider (acting reasonable) are required as a result of any change in, or decision of a competent authority under, Applicable Data Protection Law, to allow transfers and Processing of Personal Data to continue without breach of Applicable Data Protection Law.
- 12.2 If you object to any variation under clause 12.1, you may, despite anything to the contrary in the Terms, terminate these Terms and your right to access and use the Marketplace without penalty on written notice, provided your notice of termination is received by us before the effective date of our notice. If you do not terminate these Terms and your right to access and use the Marketplace in accordance with this clause, you are deemed to have agreed to the variation.

### **13 LIMITATION OF LIABILITY**

The liability of each party to the other party under or in connection with this Addendum is subject to the limitations and exclusions set out in the Terms, and any reference in the Terms to the liability of a party means the aggregate liability of that party under the Terms and this Addendum together.

### **14 GENERAL**

If any provision of this Addendum is, or becomes unenforceable, illegal or invalid for any reason, the relevant provision is deemed to be varied to the extent necessary to remedy the unenforceability, illegality or invalidity. If variation is not possible, the provision must be treated as severed from this Addendum without affecting any other provisions of this Addendum.

## **SCHEDULE 1**

### **DETAILS OF PROCESSING**

#### **Nature and Purpose of Processing**

We will Process Personal Data as necessary to provide the Marketplace in accordance with the Terms, as further specified in our online documentation relating to the Marketplace, and as further instructed by you and your Personnel and other end users you allow to use the Marketplace through the use of the Marketplace.

#### **Duration of Processing**

Subject to clause 11 of this Addendum, we will Process Personal Data for the duration of the Terms, unless otherwise agreed upon in writing.

#### **Categories of Data Subjects**

You may submit Personal Data to the Marketplace, the extent of which is determined and controlled by you in your sole discretion, and which may include, but is not limited to, Personal Data relating to the following categories of data subjects:

- **Buyers** - Marketplace users who purchase Samples or accept a Quote for goods or services advertised by a Producer in a listing on the Marketplace.
- **Producers** – Marketplace users who have set up an account with the Marketplace to list goods and/or services and offers such goods and/or services to Buyers. Producers are also referred to as **Artisans** on the Marketplace and the terms are interchangeable.
- **News Subscribers** – Marketplace users who have subscribed to receive news updates and / or the Marketplace newsletter and / or promotions etc via the Marketplace.

#### **Type of Data**

You may submit Personal Data to the Marketplace, the extent of which is determined and controlled by you in your sole discretion, and which may include, but is not limited to, the following categories of personal data:

- Names; Email Addresses; Email Receipts / Delivery Confirmations; Mobile Phone Numbers; Landline Phone Numbers; Physical Addresses; Location; IP Address; Cookie Identifier.

## SCHEDULE 2

### LIST OF SUB-PROCESSORS AS AT 6 AUGUST 2021

**Effective: August 3, 2021**

To support delivery of our Services, OnlyFromNZ Ltd (or one of its Affiliates listed below), may engage and use data processors with access to certain Customer Data (each, a "**Subprocessor**"). This page provides important information about the identity, location and role of each Subprocessor. Terms used on this page but not defined have the meaning set forth in the OnlyFromNZ Marketplace Terms and or superseding written agreement between Customer and OnlyFromNZ (the "**Agreement**").

#### Infrastructure Subprocessors

OnlyFromNZ may use the following Subprocessors to host Customer Data or provide other infrastructure that helps with delivery of our Services:

Entity Name	Subprocessing Activities	Entity Country	Privacy Policy
Google	Cloud Services, Push Notifications	United States	<a href="#">Privacy Policy</a>
HubSpot	Website, Marketing & Sales Software	United States	<a href="#">Privacy Policy</a>
MailChimp	Marketing Automation Platform	United States	<a href="#">Privacy Policy</a>
Outward	Escrow Payment Provider	New Zealand	<a href="#">Privacy Policy</a>
Stripe	Payment Gateway	United States	<a href="#">Privacy Policy</a>
WordPress	Static Content Management	United States	<a href="#">Privacy Policy</a>
Xero	Accounting Platform	New Zealand	<a href="#">Privacy Policy</a>
Zoom	Video Conferencing	United States	<a href="#">Privacy Policy</a>

#### Third Parties

OnlyFromNZ currently uses third party Subprocessors to provide infrastructure services, and to help us provide customer support and email notifications. Prior to engaging any third party Subprocessor, OnlyFromNZ performs diligence to evaluate their privacy, security and confidentiality practices, and executes an agreement implementing its applicable obligations.

#### Updates

As our business grows and evolves, the Subprocessors we engage may also change. We will endeavour to provide the owner of Customer's account with notice of any new Subprocessors to the extent required under the Agreement, along with posting such updates here. Please check back frequently for updates.