DATA PROCESSING AGREEMENT

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Data Processing Agreement
2024 Version

Parties to these terms and conditions

Zuko	**FORMISIMO LTD** (Company Number 08859680). Colony, 5 Piccadilly Place, Manchester, England, M1 3BR (T/A Zuko Analytics)
Client	The organisation(s) identified as the Client in the Service Agreement.

1. Background to the Agreement

The Client has engaged Zuko to provide the service of processing and delivering form analytics data generated by the Client's website. This may be through Zuko's dashboard, an API, supplied directly or via another method agreed by both parties. In providing the Service, Zuko may be required to process personal data on behalf of the Client.

The terms of this agreement come into force upon acceptance by the Client of the Terms & Conditions of using the Zuko service.

2. Definitions

    2.1. Certain definitions (unless the context otherwise indicates)

(a)	Affiliate	In relation to a person, any other entity which Controls that person, is Controlled by that person or is under the same common underlying Control as of that person.
(b)	Control	A person (**'X'**) will be regarded as having 'Control' over another person (**'Y'**) if X alone (and without being subject to the further direction of any other person) directly or indirectly possesses the power (whether by the direct or indirect holding of voting shares or otherwise) to direct the management and policies of Y on all matters.
(c)	Data Loss Event	Any event that causes (or creates an unreasonable risk of causing) any of the following: ● Unauthorised access to any Processed Personal Data then in the possession or control of the Relevant Processor or its Sub-processors ● Loss or destruction of Processed Personal Data ● Which puts the Relevant Processor in breach of this Agreement and/or in breach of the Data Protection Legislation.
(d)	Data Protection Impact Assessment	An assessment by a Relevant Controller of the impact of the processing by the Relevant Processor of the Processed Personal Data in connection with the Service.
(e)	Data Protection Legislation	Each of the following to the extent relevant ● The General Data Protection Regulation (if applicable in the UK at the time). ● The Law Enforcement Directive (Directive (EU) 2016/680) (if applicable in the UK at the time). ● The Data Protection Act 2018 Any additional or replacement Law from time to time relating to the processing and protection of personal data or anything similar of individuals and privacy.

(f)	Law	Any of the following applicable to a party from time to time (to be read independently) ● Any statute, regulation, by-law, order, subordinate legislation or anything similar to any of these. ● Any directive or other European instrument (to the extent it is binding on the party) ● Any treaty ● Any judgement, rule of common law or equity ● Any order of a competent court, tribunal, arbitrator or anything similar to any of these ● Any guidance or anything similar issued by authorised government bodies (whether legally binding or not) Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect at the time on the respective activities of any party in connection with this Agreement.
(g)	Protective Measures	Technical and organisational measures for the purposes of this Agreement, particularly item 7.1.
(h)	Processed Personal Data	In relation to a Relevant Controller, any personal data if and for as long as all of the following apply to that personal data ● A Relevant Controller is a controller according to the Data Protection Legislation. ● The Relevant Processor and/or its Sub-processor(s) is a processor in connection with this Agreement according to the Data Protection Legislation.
(i)	Relevant Controller	The Client and/or its Affiliates (where relevant)
(j)	Relevant Processor	Zuko and/or its Affiliates (where relevant)
(k)	Service	This agreement relates to two services to which the Client may subscribe to one or both: i) Zuko Analytics Processing and delivering form analytics data generated by the Client's website. ii) Zuko Form Builder Publishing a form on the Client's website and hosting any data generated by the completion of such forms.
(l)	Service Agreement	The terms and conditions entered into between the parties in respect of the provision of the Service by Zuko to the Client.
(m)	Sub-processor	Any third party (including any subcontractor of the Relevant Processor) appointed by the Relevant Processor to process any Processed Personal Data in connection with this Agreement.
(n)	Interpretation	The definitions in the Data Protection Act 2018 apply to this Agreement unless otherwise indicated in this Agreement.

3. Roles of the parties

3.1.	Roles of the Relevant Controller and the Relevant Processor (for the purposes of the Data Protection Legislation) in relation to any Processed Personal Data which the	The Relevant Controller is the controller and the Relevant Processor is the processor in relation to the Processed Personal Data.

Relevant Processor is to process in connection with this Agreement	

4. About the processing

4.1. Brief description of the Processed Personal Data which the Relevant Processor is to process in connection with this Agreement E.g. types, subject matter of the relevant Processed Personal Data	**i) Zuko Analytics** End user behaviour data from the Client's website **ii) Zuko Form Builder** Information entered in the Zuko form hosted by the Client. Depending on the structure of the form this may include data such as name, email and phone number.
4.2. **Duration:** for how long the Relevant Processor is to process the relevant Processed Personal Data in connection with this Agreement	For the duration of the Service Agreement and in any case while Zuko is processing any of the Processed Personal Data which the Client has transferred to it in connection with the Service.
4.3. **About the data subjects:** the categories of the data subjects in relation to whom the relevant Processed Personal Data relates in connection with this Agreement	End-users of the Client's website on which Zuko tracking or forms is installed
4.4. The nature, scope and purpose of the processing of the relevant Processed Personal Data by the Relevant Processor in connection with the Service	**i) Zuko Analytics** To translate this data to aggregated, anonymous, visualisations showing the behaviour of audiences on the Client's web forms. **ii) Zuko Form Builder** To display any form submissions from Zuko forms created by the Client and hosted on their website.

5. Relevant Controller's obligations

5.1. General obligations of the Relevant Controller	The Relevant Controller must comply with the Law, particularly the Data Protection Legislation, in its role as controller in relation to the relevant Processed Personal Data.

6. General obligations of the Relevant Processor

6.1. Paramount obligation of the Relevant Processor in relation to Processed Personal Data of the Relevant Controller	● The Relevant Processor must comply with their respective obligations under the Law, particularly the Data Protection Legislation in relation to Processed Personal Data of the Relevant Controller. ● This overrides anything to the contrary elsewhere in this Agreement.
6.2. Purposes for which the Relevant Processor and/or its Sub-processors are authorised to process any Processed Personal Data under this Agreement	● To enable the Relevant Processor and/or a relevant Sub-processor to meet its obligations under the Service Agreement; and ● For any other purpose permitted in writing by the Relevant Controller. ● For any other purpose required by Law.

7. Protective Measures

7.1. Obligations of the Relevant Processor in relation to Protective Measures	● The Relevant Processor has Protective Measures in place to process the Processed Personal Data in connection with this Agreement

	which are appropriate having regard to matters including the following where reasonably relevant:
	- The nature of the Processed Personal Data being processed.
	- The risks to that processing of any serious adverse consequences to the relevant Processed Personal Data, including unlawful access, unlawful processing, accidental loss, modification or destruction.
	- The state of technological developments
	- The cost of implementing the Protective Measures.

7.2. Examples of Protective Measures for the purposes of item 7.1 (where relevant to the processing)	• Encrypting the Processed Personal Data. • Ensuring confidentiality, integrity, availability and resilience of systems and services • Ensuring that availability of and access to the Processed Personal Data can be restored in a timely manner after an incident. • Regularly testing and evaluation of the relevant security measures. • Regularly testing and evaluating the effectiveness of such measures.

8. Obligations to inform

8.1 The Relevant Processor must inform the Relevant Controller of any of the following events or circumstances in relation to any Processed Personal Data

- The Relevant Processor must do so promptly on first becoming aware of the event or circumstance
- But only to the extent it is lawful for the Relevant Processor to do so

(a) Requests, complaints or other communication	As indicated in item 9 in relation to certain requests, complaints and other communications.
(b) Unauthorised access	Any incident of unauthorised access to that Processed Personal Data.
(c) Data Loss Event	A Data Loss Event in relation to the relevant Processed Personal Data.
(d) Breach	Any incident of processing of that Processed Personal Data that results in any of the following: • A Material Breach of this Agreement; and/or • In any case, a serious breach of the Data Protection Legislation.

8.2. Information the Relevant Processor must provide the Relevant Controller	All of the following to the extent relevant A reasonable description of the relevant event or circumstance. • The number of data subjects affected. • How the Relevant Controller can obtain further information (e.g. a contact person within the organisation of the Relevant Processor or the Sub-processor). • The likely consequences of the relevant event or circumstance • The measures the Relevant Processor or the Sub-processor has taken (and/or proposes to take) in response to the event or circumstance to mitigate the harm to the Processed Personal Data and/or to the relevant data subjects and/or to the Relevant Controller.

8.3. Other obligations of the Relevant Processor if any of the events or circumstances described in item

8.1 (other than item (a)) occurs or arises in relation to any Processed Personal Data which the Relevant Processor is the Processor in connection with this Agreement

(all of the following to the extent relevant)

(a)	Assist	The Relevant Processor must provide the Relevant Controller with reasonable assistance in relation to the Relevant Controller's response to the relevant event or circumstance.
(b)	Preventative steps	The Relevant Processor must take appropriate steps (having reasonable regard to the views of the Relevant Controller) to reduce the reoccurrence of the relevant event or circumstance.
(c)	Comply with Law	In any case, the Relevant Processor must comply with the Data Protection Legislation and the Law generally in its response to the relevant event or circumstance.

9. Obligation to assist

9.1.	Assistance which the Relevant Processor must give the Relevant Controller in relation to the Processed Personal Data	The Relevant Processor must give the Relevant Controller reasonable assistance for any of the following purposes
		
		● To enable the Relevant Controller to meet its obligations in relation to the Processed Personal Data under Law, particularly the Data Protection Legislation.
		
		● To enable the Relevant Controller to respond to any request, complaint or other communication received by the Relevant Controller and/or the Relevant Processor relating to the processing of the Processed Personal Data by the Relevant Processor and/or its Sub-processor. This request, complaint or other communication may come from
		
		   - The relevant data subject; and/or
		
		   - The Information Commissioner or other regulatory or law enforcement body; and/or
		
		   - Any person not described above who is entitled by Law to a response to its request, complaint or other communication.

9.2.	When the Relevant Processor must give the Relevant Controller the assistance described in item 9.1	● In a timely manner on the Relevant Controller's reasonable request having regard to the circumstances (e.g. any deadlines imposed on the Relevant Controller by Law). ● The Relevant Processor is only required to provide that assistance if the Relevant Controller has made the request for at least one of the purposes indicated in item 9.1.
9.3.	How the Relevant Processor's costs in providing the assistance described in item 9.1 are to be met	The Relevant Controller must reimburse the Relevant Processor for the Relevant Processor's reasonable and sufficiently evidenced costs in providing that assistance.

10. Assisting with Data Protection Impact Assessments

10.1.	Obligation of the Relevant Processor to assist the Relevant Controller in preparing any Data Protection Impact Assessment	● The Relevant Processor must provide the Relevant Controller with reasonable assistance when the Relevant Controller prepares any Data Protection Impact Assessment prior to the Relevant Processor (or its Sub-processor) commencing any processing of any Processed Personal Data in connection with this Agreement. ● But only in relation to those parts of the Data Protection Impact Assessment relevant to that processing.

11. Transferring Processed Personal Data

11.1.	Obligations of the Relevant Processor in transferring any Processed Personal Data	The Relevant Processor must not host or otherwise transfer any Processed Personal Data outside of the UK or the European Economic Area unless all of the conditions in item 11.2 are met.
11.2.	All of the following conditions must be met for the purposes of item 11.1	
(a)	Safeguards	The Relevant Controller and/or the Relevant Processor and/or its Sub-processor has provided appropriate safeguards in relation to the transfer as decided by the Relevant Controller, whether in accordance with General Data Protection Regulation Article 46 or Article 37 of Law Enforcement Directive (Directive (EU) 2016/680) (if these are applicable in the UK) or any other applicable Data Protection Legislation.
(b)	Obligations under the Data Protection Legislation	The Relevant Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Processed Personal Data that is hosted or otherwise transferred.
(c)	Rights of the data subject	The data subject has enforceable rights and effective legal remedies which are enforceable and effective in relation to the Processed Personal Data which is hosted or otherwise transferred.
(d)	Standard clauses	If requested by the Relevant Controller in writing, the Relevant Processor (or Sub-processor where relevant) has become legally bound (in favour of the Relevant Controller and its Affiliates) to ● The standard contractual clauses applicable to the hosting or other transfer of Personal Data between Controllers and Processors as set out in the European Commission decision of February 5, 2010 (C (2010) 593), as amended; or ● Such other contractual clauses approved by the Relevant Controller (such approval not to be unreasonably withheld where these other contractual clauses provide at least equivalent protection to the Processed Personal Data.

12. Data protection officer

12.1.	Data protection officer	The Relevant Processor has in place a designated data protection officer: DPO Name: GDPR Assist UK Ltd. Email address: paul@gdprassist.co.uk Postal address: Belmont Suite, Paragon Business Park, Chorley New Road, Horwich, Bolton, BL6 6HG, UK

13. About the Relevant Processor's Personnel

13.1.	The Relevant Processor must comply with all of the following obligations in relation to each of its personnel in relation to the individual's access to, or his/her involvement in, the processing of, any Processed Personal Data in connection with this Agreement	
(a)	Level of access	The Relevant Processor may only give the relevant individual access to the Processed Personal Data if he/she has a genuine 'need to know' for the purposes of carrying out his/her duties.

(b)	How they process	The Relevant Processor must ensure the relevant individual does not do anything to cause the Relevant Processor to breach this Agreement and/or (in any case) the Law.
(c)	Understanding of obligations	The Relevant Processor must use reasonable endeavours to ensure the individual understands and complies with the Relevant Processor's obligations under this Agreement and under the Law in relation to the processing of the Processed Personal Data.
(d)	Training	The Relevant Processor must ensure that the individual has undertaken adequate training in respect of the Law and the Relevant Processor's policies and procedures in the processing of the relevant Processed Personal Data.
(e)	Confidentiality undertakings	The Relevant Processor must ensure the individual has given legally binding confidentiality obligations to the Relevant Processor (e.g. under his/her contract of employment) which are sufficient to protect the confidentiality of the Processed Personal Data.

14. Audit and inspection

14.1. Inspection and audit rights and obligations of the Relevant Controller and the Relevant Processor In relation to the processing of any Processed Personal Data in connection with this Agreement

(a)	Main obligations of the Relevant Processor	It must do all of the following for the purposes indicated in item (c): ● Give the Relevant Controller and/or its personnel and/or other agents appropriate access to relevant premises, records, systems, and equipment (and the like of any these). ● Direct the Relevant Processor's relevant personnel to give the Relevant Controller and/or its authorised agents materially sufficient and materially accurate explanations of the relevant premises, records, systems, and equipment (and the like of any these) under inspection.
(b)	Notice the Relevant Controller must give the Relevant Processor before it is to comply with its obligations in item (a)	The Relevant Controller must give the Relevant Processor no less than 14 days written notice.
(c)	Purposes for item (a)	To enable the Relevant Controller to verify the Relevant Processor's compliance with the following in relation to its processing of the Processed Personal Data: ● With the Data Protection Legislation and the Law generally; and ● With this Agreement.
(d)	Confidentiality	The Relevant Processor may delay carrying out its obligations under item (a) in relation to a particular inspection and audit until it has been given legally binding written confidentiality undertakings (on reasonable terms and in favour of the Relevant Processor and its Affiliates) by relevant representatives of the Relevant Controller engaged in that inspection and audit.

15. Sub-processors

15.1. The Relevant Processor must comply with all of the following if any Sub-processor processes any relevant Processed Personal Data in connection with this Agreement

(not to limit the Relevant Processor's obligations in relation to such Sub-processor generally)

(a)	List of current Sub-processors who the Relevant Processor currently uses	Amazon Web Services
(b)	Consents of the Relevant Controller	- The Relevant Processor will provide notice of any newly appointed direct or indirect Sub-processor in order to give the Relevant Controller the opportunity to consent to that appointment. - The Relevant Controller must not unreasonably withhold that consent.
(c)	Examples of reasonable grounds on which the Relevant Controller may refuse consent under item (b)	Any of the following, not to exclude other reasonable grounds to do so - The Sub-processor is not legally bound to obligations to the Relevant Processor which are at least as onerous to the Sub-processor as those in this Agreement are to the Relevant Processor. - The Relevant Controller has reasonable grounds to believe (having been given a reasonable opportunity to check) that the Sub-processor's Protective Measures are not adequate.
(d)	Ensure compliance	The Relevant Processor must ensure the Sub-processor's compliance with relevant obligations under this Agreement in connection with the Sub-processor's processing of the relevant Processed Personal Data.

16. Delete or return

16.1. The Relevant Processor must do any of the following in relation to any Processed Personal Data it processes in connection with this Agreement	Any of the following as the Relevant Controller instructs. - Delete it; or - Return it (including copies) to the Relevant Controller; or - Give it to a third party nominated by the Relevant Controller - Exception: this obligation does not apply to the extent the Relevant Processor or its Sub-processor is required by Law to retain the relevant Processed Personal Data.
16.2. When the Relevant Processor must carry out its obligations in item 16.1	- Promptly on the Relevant Controller's request (to be made when the Relevant Processor has no further need to retain that Processed Personal Data for the purpose of this Agreement); or - In any case promptly on the discontinuation of the Service Agreement unless similar activities are to continue under a new contract.

17. Modifying Processed Personal Data

17.1. Restrictions on the right of the Relevant Processor to modify any of the Processed Personal Data	The Relevant Processor must not modify any of the Processed Personal Data except to the extent any of the following applies: - The Relevant Processor is required by Law to do so. - The Relevant Processor is permitted or required elsewhere in this Agreement to do so. - The Relevant Controller permits or requires the Relevant Processor to do so.

18. Factual promises given by the Relevant Controller

18.1. Factual promises given by the Relevant Controller in relation to its Processed Personal Data	That to the best of the Relevant Controller's knowledge (having made reasonably necessary checks), it is permitted by Law to allow the Relevant Processor and its permitted Sub-processors to process the Processed Personal Data in connection with this Agreement.

19. Miscellaneous issues

19.1. Duration of the rights and obligations (or anything similar to any of these) of the Relevant Controller and the Relevant Processor under this Agreement	Those rights and obligations (or anything similar to any of these) continue for as long as the Relevant Processor and/or Its Sub-processor continues to process any Processed Personal Data of the Relevant Controller in connection with the Service, even if after the expiry of the Service Agreement
19.2. Obligations of the Client if its Affiliate is a Relevant Controller	The Client must use reasonable endeavours to ensure its Affiliate complies with this Agreement in relation to the Processed Personal Data of that Affiliate.
19.3. Rights of third parties with rights under this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999	- The rights of the following third parties to directly enforce such rights, powers or anything similar under this Agreement (under that Act) are RETAINED: Affiliates of the Client and Affiliates of Zuko - All other rights of third parties under the Act are excluded to the fullest extent permitted by Law.
19.4. How this Agreement is to be validly amended (only in the following way is valid)	- By agreement in writing between the Parties. - The relevant document must clearly indicate an intention to amend this Agreement. - The relevant document must be authorised by a person who has (or it is reasonable for the other party to believe, without making further checks, that the relevant person has) appropriate authority to amend this Agreement on behalf of that party. - If no consideration is indicated in the relevant document: the parties shall pay each other £1.00 as consideration, which they consider sufficient consideration.

20. Governing law and jurisdiction

20.1. The law under which this Agreement is to be interpreted and generally governed	English law.
20.2. Jurisdiction to exclusively apply to disputes arising in connection with this Agreement	English courts.

21. Interpretation

21.1. The Parties agree to interpret Agreement as follows

Except to the extent

- The context otherwise requires; and/or
- The parties otherwise agree in writing.

21.2.

21.3. Headings	Headings do not affect the interpretation of this Agreement.
21.4. Reference to a party	Reference to any party is a reference to a party to this Agreement.

	● It includes reference to that party's successors in title and any person to whom that party assigns any of its rights, powers, benefits (or similar) under this Agreement.
21.5. Consents, approvals	Where consent, approval, permission or anything similar of a person is not to be unreasonably refused, it also cannot be unreasonably delayed or subject to unreasonable conditions.
21.6. Definitions	If a word or phrase is defined in this Agreement, its other grammatical forms have a corresponding meaning.
21.7. Statutes, codes etc.	Reference in this Agreement to any statute, code or anything similar includes reference to any amending, replacing, modifying or consolidating statute, code or anything similar on substantially similar subject matter.
21.8. 'In writing'	● Use of the expression 'in writing' (or a similar word) in this Agreement includes (but is not limited to) an e-mail or facsimile message or any other methods of representing words in a visible form. ● It does not include communication by telephone text messages or communication via a social media site (or anything similar to any of these).
21.9. 'Including'	● Use of the word 'including', 'in particular', 'for example' (or a similar words or expressions) in this Agreement at the commencement of a list to illustrate a particular concept does not limit that concept in any way. ● Use of the abbreviation 'etc.' at the end of a list in this Agreement to illustrate a particular concept does not limit that concept in any way.
21.10. Other references in this Agreement	● Reference to one gender refers to all genders. ● Reference to the singular includes the plural and vice versa. ● Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity.