

APPENDIX 5

DATA PROCESSING TERMS (Manheim as Data Processor)

Definitions and Interpretation

The following definitions shall apply in these Data Processing Terms:

Approved Countries	means the United Kingdom; countries in the European Economic Area; countries that the European Union has approved as having an adequate level of data protection;
Business Days	means any day other than a Saturday or Sunday or public holiday in England;
Company:	has the meaning given to it in the Schedule;
Complaint:	means a complaint or request relating to either party's obligations under Data Protection Legislation to the extent that it is relevant to these Data Processing Terms including, without limitation, any compensation claim from a Data Subject or any notice, investigation or other action from a Supervisory Authority;
Consumer:	has the meaning given to it in Appendix 1 (eVA Services Terms and Conditions);
Data Controller:	has the same meaning given to that term (or the term "controller") in the Data Protection Legislation;
Data Processor:	has the same meaning given to that term (or the term "processor") in the Data Protection Legislation;
Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the UK including the EU GDPR; UK GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended. Controller (or Data Controller), Processor (or Data Processor), Data Subject, Personal Data, Personal Data Breach, Processing and Appropriate Technical Measures: shall each be as defined in the Data Protection Legislation;
Data Subject Request:	means a request made by a Data Subject to exercise any rights of the Data Subject under the Data Protection Legislation;
EU GDPR:	means the General Data Protection Regulation ((EU) 2016/679);
SCC	means the European Commission's Standard Contractual Clauses, also approved by the UK government, for the transfer of Personal Data from the European Union or the UK to processors established in third countries (controller-to-processor transfer), as set out in the Annex to Commission Decision 2010/87/EU
Supervisory Authority:	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Legislation;
UK GDPR	means the General Data Protection Regulation as enacted into UK law by the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments Etc) (EU Exit) Regulations 2019
Vehicle:	has the meaning given to it in Appendix 1 (eVA Services Terms and Conditions);
WebApp	has the meaning given to it in Appendix 1 (eVA Services Terms and Conditions).

1. Data Protection

- 1.1. The Parties agree that, in connection with the performance of their obligations under the Agreement, they shall comply with all applicable requirements of the Data Protection Legislation.
- 1.2. The Parties acknowledge that, depending on the configuration of the WebApp, Manheim may collect from a Consumer, Personal Data and provide such Personal Data to the Company during the term of this Agreement. The purpose of this transfer of Personal Data is to allow the Company to respond to the Consumer's interest in the purchase of a new vehicle.
- 1.3. The parties agree that, for the processing of the Personal Data referred to in clause 1.2, the Company shall be the Data Controller and Manheim shall be the Data Processor. Manheim shall, unless required to do otherwise by any applicable law, process the Personal Data only on and in accordance with the Company's documented instructions set out in clause 1.2 ('**Processing Instructions**').

2. Manheim's Obligations

- 2.1. If any applicable law requires Manheim to process Personal Data other than in accordance with the Processing Instructions, it shall notify the Company of any such requirement before processing the Personal Data. Manheim will not process the Personal Data in a way that does not comply with the Data Protection Legislation and shall notify the Company if, in its opinion, the Processing Instructions would not comply with the Data Protection Legislation.
- 2.2. Subject to the Company paying Manheim's reasonable charges, Manheim shall assist the Company in the fulfilment of the Company's obligations to respond to Data Subject Requests relating to Personal Data.
- 2.3. Manheim shall in relation to the Personal Data:
 - 2.3.1. refer all Data Subject Requests it receives to the Company within three Business Days of receipt of the request;
 - 2.3.2. subject to the Company paying Manheim's reasonable charges, provide such information and cooperation and take such action the Company reasonably requests in relation to a Data Subject Request, within any timescale reasonably required by the Company; and
 - 2.3.3. not respond to any Data Subject Request or Complaint without the Company's prior written approval.
- 2.4. Manheim shall, subject to the Company paying Manheim's reasonable costs, provide such information, co-operation and other assistance that the Company requires (considering the nature of processing and the information available to Manheim) to ensure compliance with the Company obligations under Data Protection Legislation, specifically with respect to:
 - 2.4.1. security of processing of Personal Data;
 - 2.4.2. data protection impact assessments (as such term is defined in Data Protection Legislation) that relate to Personal Data;
 - 2.4.3. prior consultation with a Supervisory Authority regarding high risk processing of Personal Data; and
 - 2.4.4. any remedial action and/or notifications in relation to Personal Data to be taken in response to any Personal Data Breach and/or Complaint, including (subject in each case to the Company's prior written authorisation) regarding any notification of the Personal Data Breach to Supervisory Authorities and/or communication to any affected Data Subjects.

3. Technical and Organisational Measures

- 3.1. Manheim shall implement and maintain appropriate technical and organisational measures in relation to the processing of Personal Data by Manheim such that the processing will meet the requirements of Data Protection Legislation, and ensure the protection of the rights of Data Subjects; so as to ensure a level of security in respect of Personal Data processed by it is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed.
- 3.2. Manheim shall ensure that all staff entrusted to handle Personal Data are appropriately trained and have committed themselves to a contractual or legal duty of confidentiality in respect of the Personal Data

4. Cross-border Transfers of Personal Data and Sub-Processing

- 4.1. Subject to 4.2, Manheim shall be authorised by the Company to transfer Personal Data outside of the Approved Countries.

- 4.2. Manheim will process or transfer any Personal Data outside the Approved Countries under the following conditions:
- 4.2.1. Manheim is processing the Personal Data in a territory which is subject to a current finding by the European Commission, for Personal Data subject to the EU GDPR, or current finding by the UK government, for Personal Data subject to UK GDPR, that the territory provides adequate protection for the privacy rights of individuals and such processing shall be subject to clause 4.4 of this Appendix 5; or
- 4.2.2. Manheim participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that Manheim and where appropriate, the Company, can ensure that the appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals; or
- 4.2.3. The transfer of any Personal Data otherwise complies with the Data Protection Legislation for the reasons set out in this Appendix 5 or Appendix 1.
- 4.3. Manheim shall be generally authorised to appoint and use sub-processors under the Agreement. Manheim shall maintain a list of sub-processors currently in use on its website **[insert web link]**. The Company shall have a period of 30 days from the point at which any changes are made to the website to object, on reasonable grounds, to any change in the use of sub-processors. If no objection is received within 30 days but the Company has continued to use the our products and services the changes shall be deemed as accepted.
- 4.4. Manheim shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Company, containing such information as the Company may reasonably require, including:
- 4.4.1. the name and contact details of the Data Processors;
- 4.4.2. the categories of processing carried out by the relevant Data Processor;
- 4.4.3. details of any transfers of Personal Data outside of the Approved Countries; and
- 4.4.4. a general description of the technical and organisational security measures implemented by Manheim as required under the Data Protection Legislation.
- 4.5. If any Personal Data transfer between the Company and Manheim requires execution of SCC to comply with Data Protection Legislation, then the Company authorises Manheim to enter into the relevant SCC with any sub-processor in the Company's name and on its behalf. In such circumstances, Manheim will provide to the Company a copy of the applicable SCC for approval before it is signed and once signed, the executed copy of the SCC.

5. Breach notification

- 5.1. In respect of any Personal Data Breach, Manheim, shall:
- 5.1.1. notify the Company of the Personal Data Breach without undue delay ; and
- 5.1.2. provide the Company without undue delay with such details as the Company reasonably requires regarding:
- 5.1.2.1. the nature of the Personal Data Breach, including the categories and approximate numbers of Data Subjects and Personal Data records concerned;
- 5.1.2.2. any investigations into such Personal Data Breach;
- 5.1.2.3. the likely consequences of the Personal Data Breach; and
- 5.1.2.4. any measures taken, or that Manheim recommends, to address the Personal Data Breach, including to mitigate its possible adverse effects,
- provided that, (without prejudice to the above obligations) if Manheim cannot provide all these details within such timeframes, it shall (in the same timeframe) provide the Company with reasons for the delay and when it expects to be able to provide the relevant details (which may be phased) and give the Company regular updates on these matters.
- 5.2. Manheim shall promptly (and in any event within two Business Days) inform the Company if it receives a Complaint and provide the Company with full written details of such Complaint.

6. End of Contract Provisions

6.1. Manheim will, upon termination of the Agreement, delete or return (at the Company's choice) all the Personal Data processed on behalf of the Company. If no notification to either effect is received from the Company within 30 days of the termination of the Agreement then the Personal Data will be deleted.

7. Audits & Inspections

7.1 Manheim will allow for and contribute to audits undertaken by the Company or the Company's appointed representative. Such audits shall be limited to a review of documentation reasonably required by the Company to demonstrate Manheim's compliance with the obligations under this Appendix 5.