

**OCTIV FITNESS (“PROPRIETARY) LIMITED**  
**(“Octiv Fitness, us, our, we”)**

**DATA PROCESSING ADDENDUM**

**1. INTRODUCTION AND APPLICATION**

- 1.1. This Data Processing Agreement and its annexures (“the **DPA**”) forms part of the terms and conditions of service (<https://app.octivfitness.com/terms-of-use>) (“the Principal Agreement”) which governs the licensing and use of the Octiv Fitness Platform software as a service (SaaS) by the Client.
- 1.2. The Client has contracted with Octiv Fitness to perform certain services in accordance with the Principal Agreement, which services require the processing of Client Personal Data.
- 1.3. Capitalised terms which are not defined in this DPA, have the meaning assigned to them in the Principal Agreement.
- 1.4. This DPA is applicable for the duration of the Principal Agreement, with surviving provisions applying as the applicable law and context dictates.

**2. DEFINITIONS AND INTERPRETATION**

- 2.1. “**Applicable Data Protection Legislation**” means the privacy laws which apply to the Processing of the Client Personal Data in terms of the Principal Agreement and this DPA, in particular, the POPIA and, if applicable, the GDPR;
- 2.2. “**Client**” means the customer which subscribes to the Octiv Fitness Platform, thereby procuring the software as a service and related product offerings from Octiv Fitness;
- 2.3. “**Client Personal Data**” means any and all Personal Data Processed by Octiv Fitness, as a Processor, contracted on behalf of the Client and pursuant to or in connection with the Principal Agreement;

- 2.4. **"Controller"** means the Client, being a natural or legal person, which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.
- 2.5. **"Oktiv Fitness Platform"** means the cloud-based software solution developed and owned by Oktiv Fitness, which offers fitness facilities which are Clients an integrated business management tool and CRM platform.
- 2.6. **"Data Subject"** means the individual to whom Personal Data relates.
- 2.7. **"GDPR"** means the General Data Protection 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.
- 2.8. **"Personal Data"** means any information relating to an identified or identifiable individual where such information is contained within data and is protected similarly as personal data or personally identifiable information under Applicable Data Protection Legislation;
- 2.9. **"Personal Data Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed;
- 2.10. **"POPIA"** means South Africa's Protection of Personal Information Act 4 of 2013 and all relevant Regulations and as amended from time to time'
- 2.11. **"Processing"** means any operation or set of operations which is performed on Personal Data, encompassing the collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction or erasure of Personal Data. The terms "process", "processes" and "processed" will be construed according to the GDPR (Regulation (EU) 2016/679);
- 2.12. **"Processor"** means a natural or legal person, public authority, agency or other body which processes Personal Data on behalf of the Controller;
- 2.13. **"Special Category Data"** means personal information of Data Subjects which is especially sensitive and includes information relating to; race and ethnic origin, religious and philosophical beliefs, political opinions, trade union membership, biometric data

used to identify an individual, genetic data, health data and data related to sexual preferences, sex life and/or sexual orientation; and

2.14. **"Sub Processor"** means any entity engaged by Octiv Fitness to Process Client Personal Data in connection with the Principal Agreement.

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

3.1. The subject matter, duration, the nature of and purpose of the Processing and types of Client Personal Data are set out in **Appendix 1** as supplemented by the terms of the Principal Agreement.

3.2. Octiv Fitness does not Process Client Personal Data for its own purposes (whether commercial or personal) but rather processes the Client Personal Data purely on behalf of and according to the instructions received from the Client as Controller. For these purposes Octiv Fitness is a Processor.

3.3. If the Client is a Processor with respect to the Client Personal Data, the Client warrants its lawful instructions and actions with respect to the Processing of such Personal Data, including its appointment of Octiv Fitness as a Sub-Processor.

### **4. CLIENT WARRANTIES AND RESPONSIBILITY**

4.1. As between the Client and Octiv Fitness, the Client will have the sole responsibility for the accuracy, quality and legality of Client Personal Data, and the means by which the Client acquired such Personal Data.

4.2. **FOR THE AVOIDANCE OF DOUBT, THIS MEANS THAT THE CLIENT MUST ENSURE THAT IT HAS THE APPROPRIATE LEGAL JUSTIFICATION TO PROCESS PERSONAL DATA AND, AS A CONTROLLER, TO ENSURE THAT DATA SUBJECTS PROVIDE THEIR PERSONAL DATA TO THE CLIENT VOLUNTARILY, THAT THEY ARE ADEQUATELY INFORMED OF THE PURPOSE FOR WHICH THEIR PERSONAL DATA IS COLLECTED, USED, SHARED AND STORED, THAT THERE IS ADEQUATE DATA SUBJECT PARTICIPATION AND THAT THEY ARE INFORMED THAT THEIR PERSONAL DATA WILL BE SHARED BY THE CLIENT WITH OCTIV IN ORDER FOR US TO PERFORM THE SERVICES IN TERMS OF THE PRINCIPAL AGREEMENT.**

4.3. The Client unconditionally acknowledges and accepts the legal duties imposed on it as a Controller in terms of the Applicable Data Protection Legislation and indemnifies Octiv

Fitness for any loss or harm (whether direct or consequential) which may arise as a result of its failure to comply with its obligations under this DPA and the Applicable Data Protection Legislation.

- 4.4. The Client shall at its sole expense, indemnify and hold Octiv Fitness harmless against all liability, including legal costs, claims, civil actions, damages, indirect or consequential damages, or expenses incurred by Octiv Fitness or for which Octiv Fitness may become liable due to any failure by the Client or its employees or agents whether authorised or not, to comply with the obligations under this DPA or Applicable Data Protection Legislation.
- 4.5. The Client warrants that it has all necessary rights to provide the Client Personal Data to Octiv Fitness.
- 4.6. The Client warrants those one or more lawful grounds for Processing set out in Applicable Data Protection Legislations support the lawfulness of the Processing of Client Personal Data.
- 4.7. To the extent that Applicable Data Protection Legislation require, the Client is responsible for:
  - 4.7.1. obtaining prior authorisation from the South African Information Regulator where its Processing activities require it to do so;
  - 4.7.2. making sure that certain designated Personnel within its organisation provide all necessary privacy notices and participation forms to Data Subjects;
  - 4.7.3. obtaining any necessary Data Subject consent to the Processing and maintaining a record of such consent; and
  - 4.7.4. communicating when a Data Subject has revoked consent to the Processor in this event.
- 4.8. The Client warrants that the Principal Agreement and the DPA set out the Client's complete and final instruction to Octiv Fitness in relation to the Processing of Client Personal Data and any additional instructions outside the scope of the Principal Agreement and this DPA will require prior written agreement between the parties.

- 4.9. The Client shall inform Octiv Fitness and the appropriate supervisory authorities, without delay, if the Processing includes Special Categories of Personal Data as contemplated by Applicable Data Protection Legislation, including without limitation; biometrics, ethnicity, medical and health related information, information regarding children under 18 years old, or any type of Processing or Personal Data that is afforded a higher level of protection under Data Protection Legislation.
- 4.10. The Client warrants that it has implemented the required technical and organisational measures to adequately protect Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data in compliance with its obligations in terms of Data Protection Law and indemnifies Octiv Fitness for any loss, claims, harm or damages whether direct or indirect occasioned as a result of the Client's use of Octiv Fitness's services.

## **5. CLIENT INDEMNITIES**

- 5.1. If Octiv Fitness is sued for something that the Client has indemnified us for, the Client will take our place in the lawsuit or be liable to reimburse us for any costs, damages and expenses including attorneys' fees on the attorney and own client scale. This means that the Client will be liable to pay Octiv Fitness attorney's fees finally awarded against us by a court or agreed to in a written settlement agreement, provided that:
- 5.1.1. Octiv Fitness will notify the Client in writing as soon as we become aware of the indemnified claim so it can take steps to contest it,
  - 5.1.2. Client may assume sole control of the defense of the claim or related settlement negotiations; and
  - 5.1.3. Octiv Fitness will provide, at Client's expense, all the assistance, information, and authority necessary to enable it to perform your obligations under this clause.
- 5.2. The Client must pay any amount due under clause 5.1 as soon as Octiv Fitness demands payment. If the Client contests the amount, it must pay the amount into Octiv Fitness's attorney's trust or give us security to cover the amount, until the dispute has been resolved.

## 6. OBLIGATIONS OF THE PROCESSOR

### 6.1. Compliance with Instructions.

6.1.1. The parties acknowledge and agree that the Client is the Controller and Octiv Fitness is the Processor of Client Personal Data.

6.1.2. Octiv Fitness shall collect, Process and use Personal Data only within the scope of Client's instructions. If Octiv Fitness believes that an instruction of the Client infringes the Applicable Data Protection Legislation, the Client will be informed without delay.

6.1.3. If Octiv Fitness are unable to Process Client Personal Data in accordance with the instructions due to a legal requirement under any Applicable Data Protection Law, Octiv Fitness will:

6.1.3.1. promptly notify the Client of that legal requirement before continuing with Processing; and

6.1.3.2. cease all Processing (other than merely storing and maintaining the security of the affected Personal Data) until such time as the Client issues new instructions with which we can comply.

6.1.4. If this provision is invoked, Octiv Fitness will not be liable to the Client for any failure to perform the applicable services until such time as the Client issues new, lawful instructions regarding the Processing.

6.1.5. Octiv Fitness will facilitate and assist with the Client's compliance obligations to implement security measures with respect to Personal Data (including if applicable, the Client's obligations pursuant to Articles 32 to 34 (inclusive) of the GDPR), by (i) implementing and maintaining the security measures described in terms of our information security policies, (ii) complying with the terms of section 6.1.7 (Personal Data Breaches); and (iii) providing the Client with information in relation to the Processing in accordance with clause 7 (Audits).

6.1.6. Confidentiality: Octiv Fitness shall ensure that any personnel whom Octiv Fitness authorises to Process Client Personal Data on its behalf is subject to confidentiality

obligations with respect to that Personal Data. The undertaking of confidentiality shall continue after the termination of the Processing activities to which the duty of confidentiality relates.

6.1.7. Personal Data Breaches: Octiv Fitness will notify the Client as soon as practicable after it becomes aware of any Personal Data Breach affecting any Client Personal Data. At the Client's request, Octiv Fitness will promptly provide the Client with reasonable assistance, to enable the Client to notify the competent authorities and/or affected Data Subjects about any relevant Personal Data Breaches if Client is required to do so under the Applicable Data Protection Legislation.

## **6.2. Data Subject Requests**

6.2.1. Octiv Fitness will assist the Client by implementing reasonable and appropriate technical and organisational measures considering the nature of the Processing, to respond to any request from Data Subjects seeking to exercise their rights with respect to Client Personal Data (including access, rectification, restriction, deletion or portability of Personal Data, as applicable), to the extent permitted by the law. If such request is made directly to Octiv Fitness, Octiv Fitness will promptly inform the Client and will advise the Data Subjects to submit their request to the Client where appropriate. The Client shall be solely responsible for responding to any Data Subjects' requests. The Client shall reimburse Octiv Fitness for any costs arising from this assistance.

## **6.3. Data Security**

6.3.1. Octiv Fitness shall implement reasonable, appropriate measures toward achieving the required technical and organisational measures to adequately protect Client Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Client Personal Data.

6.3.2. The Client unconditionally assumes any and all risks associated with the Octiv Fitness services and has voluntarily assumed these risks with a full and unconditional indemnification in favour of Octiv Fitness against financial loss or reputational harm resulting from any data security or privacy breach which may occur in the course of providing the services. This indemnification will not apply in the case of any data security or privacy breach which is caused directly by the gross negligence or willful misconduct of Octiv Fitness.

#### 6.4. Sub-Processors, International Data Flow and Third-Party Hosting

6.4.1. Oktiv Fitness is entitled to engage sub-Processors to fulfil Oktiv Fitness's obligations in relation to the services, if appropriate, and only with Client's written consent.

6.4.2. **THE CLIENT CONSENTS TO THE ENGAGEMENT AS SUB-PROCESSORS OF OCTIV FITNESS'S AFFILIATED COMPANIES AND THE THIRD PARTIES LISTED IN APPENDIX 2. FOR THE AVOIDANCE OF DOUBT, THE ABOVE AUTHORISATION CONSTITUTES CLIENT'S PRIOR WRITTEN CONSENT TO THE SUB-PROCESSING BY OCTIV FITNESS.**

6.4.3. The Client acknowledges and understands that in certain instances Oktiv Fitness contracts with a third-party hosting service provider ("Hosting Service Provider") in order to host the Client's data, including Personal Data ("Hosting Services"). As such, the terms of service of the Hosting Service Provider are applicable and are supplementary to the Agreement. This means that:

6.4.3.1. Oktiv Fitness is not liable in any form whatsoever, for any loss or damage resulting from the use of the Hosting Service Provider's platform and the Client accordingly indemnifies Oktiv Fitness from any liability arising from civil or criminal proceedings instituted against Oktiv Fitness or for any loss or damage which the Client, a Data Subject or any third party may have suffered because of any interruption or unavailability of the Hosting Services.

6.4.3.2. The Client indemnifies and holds Oktiv Fitness harmless against all losses it may suffer or actions against us as a result of:

6.4.3.2.1. the use of the Hosting Services, or any downtime, outage, degradation of the network, interruption in or unavailability of the Hosting Services. This includes software or hardware service, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting the Hosting Services;

6.4.3.2.2. non-performance or unavailability of any of the Hosting Services given by an electronic communications network or service provider,

including, line failure, or in any international services or remote mail servers;

6.4.3.2.3. non-performance or unavailability of external communications networks to which the Hosting Service Provider or the Octiv Fitness network infrastructure is connected, and

6.4.3.2.4. repairs, maintenance, upgrades, modifications, alterations or replacement of any hardware forming part of the Services, or any faults or defects in the hardware.

6.4.4. If Octiv Fitness intends to instruct Sub-Processors other than the companies listed in **Appendix 2**, Octiv Fitness will notify the Client thereof in writing. An e-mail to the email address(es) on record in Octiv Fitness's account information for the Client is sufficient) and will give the Client the opportunity to object to the engagement of the new sub-Processors within 30 (thirty) days after being notified. The objection must be based on reasonable grounds (e.g., if the Client proves that significant risks to the protection of Client Personal Data exist at the sub-Processor). If Octiv Fitness and Client are unable to resolve such objection, either party may terminate the services to which the sub-Processing relates by providing written notice to the other party.

6.4.5. Where Octiv Fitness engages sub-Processors, Octiv Fitness will enter into a contract with the sub-Processor that imposes on the sub-Processor the same obligations that apply to Octiv Fitness and the Controller under this DPA.

6.4.6. Where a sub-Processor is engaged, the Client must be granted the right to monitor and inspect the sub-Processor's activities in accordance with this DPA and the Data Protection Law, including to obtain information from Octiv Fitness, upon written request, on the substance of the contract and the implementation of the data protection obligations under the sub-Processing contract, where necessary, by inspecting the relevant contract documents.

6.4.7. The provisions of this section shall mutually apply if Octiv Fitness engages a sub-Processor in a country outside the European Economic Area ("EEA") not recognized by the European Commission as providing an adequate level of protection for personal data. If, in the performance of this DPA, Octiv Fitness

transfers any Personal Data to a sub-Processor located outside of the EEA, Octiv Fitness shall, in advance of any such transfer, ensure that a legal mechanism to achieve adequacy in respect of that processing is in place.

**6.4.8. Deletion or Retrieval of Personal Data:**

6.4.8.1. Other than to the extent required to comply with Data Protection Law, following termination of the Agreement, Octiv Fitness will delete all Personal Data (including copies thereof) processed pursuant to this DPA. If Octiv Fitness is unable to delete Personal Data for technical or other reasons, we will apply measures to ensure that Personal Data is blocked from any further Processing. Client shall, upon termination or expiration of the Agreement, and by way of issuing an instruction, stipulate, within a period of time set by Octiv Fitness, the reasonable measures to return data or to delete stored data. Any additional cost arising in connection with the return or deletion of Personal Data shall be borne by Client.

6.4.8.2. The Client shall provide a comprehensive retention schedule for all Personal Data prior to commencement of Processing.

**7. AUDITS**

7.1. Either party may, prior to the commencement of Processing, at annual intervals hereafter, or where a security breach is reasonably suspected to have occurred, audit the technical and organisational measures taken by the other in terms of the Data Protection Laws. For such purpose, the parties may:

7.1.1. obtain information from each other,

7.1.2. request an attestation or certificate by an independent professional expert, or

7.1.3. upon reasonable and timely advance agreement, during regular business hours and without interrupting business operations, conduct an on-site inspection of the business operations or have the same conducted by a qualified third party which shall not be a competitor of either party.

7.1.4. Either party shall, upon written request, and within a reasonable period of time, provide the other with all information necessary for such audit, to the extent that

such information is within the other party's control, and neither are precluded from disclosing it by applicable law, a duty of confidentiality, or any other obligation owed to a third party.

## **8. GENERAL PROVISIONS**

- 8.1. With respect to updates and changes to this DPA. No addition, change or supersession, nor any waiver of any right arising from the DPA, shall be of any force or effect unless reduced to writing and accepted by both parties.
- 8.2. Where individual provisions of this DPA are invalid or unenforceable, the validity and enforceability of the other provisions of this DPA shall not be affected.

## **APPENDIX 1: DETAILS OF PERSONAL DATA AND PROCESSING ACTIVITIES**

### **1. Categories of Data Subjects:**

- 1.1. Client personnel including authorised administrators, account managers, finance teams human resources and payroll administrators;
- 1.2. Client service providers such as gym owners, instructors, personal fitness trainers, biokineticists;
- 1.3. Client contracted members, being natural persons who are the end-users of the Octiv Fitness Platform and who access and make use of the Client's facilities;

### **2. Types of Personal Data:**

- 2.1. Client uploads on the Octiv Fitness Platform, the following information relating to its members; Full name, identity number, date of birth, gender, e-mail, mobile telephone; the extent of which is determined and controlled by the Client in its sole discretion
- 2.2. Client profile picture uploaded by Client member onto the Octiv Fitness Platform;
- 2.3. Contact Information including telephone number and e-mail address of Client members,
- 2.4. Client membership number;
- 2.5. Client and Client member's bank account and billing information;
- 2.6. Client member body measurements;
- 2.7. Client member exercise statistics and physical performance achievements.

### **3. Duration of the Processing**

- 3.1. Until the earliest of (i) expiry/termination of the Principal Agreement, or (ii) the date upon which Processing is no longer necessary for the purposes of either party performing its obligations under the Principal Agreement iii) the date on which the Processing is no longer necessary for the purpose of complying with legal duties contained in applicable laws including; without limitation, the South African Value Added Tax Act, Income Tax Act, Financial Intelligence Act and the Black Economic Empowerment Act (to the extent applicable).

### **4. Purpose of Processing**

**4.1.** Processing necessary to provide the Services to the Client pursuant to the Principal Agreement.

**5. Nature of Processing**

5.1. The Processing of Personal Data in accordance with the instructions issued by the Client pursuant to Octiv Fitness providing the Services to the Client, pursuant to the Principal Agreement.

**APPENDIX 2 – LIST OF THIRD-PARTY SUB-PROCESSORS**

<b>Sub-Processor</b>	<b>Purpose of Processing</b>	<b>Location of Processing</b>
A m a z o n W e b Services	Hosting Service Provider	South Africa / EEA
Netcash	Debit Order Integration	South Africa
Payfast	Debit Order Integration	South Africa
Three Peaks	Debit Order Integration	South Africa
Stripe	Card Payments	USA/EEA
Discovery Vitality	Integration for Vitality Points for Client members	South Africa
Mail Chimp	Transactional email service	USA
SMS Portal	Transactional email service	South Africa
Go Cardless	Debit Order Integration	UK / EEA