

CONVERTKIT, INC. DATA PROCESSING AGREEMENT

This Data Processing Agreement ("DPA") is formed between ConvertKit, Inc. ("ConvertKit") and Matthias Frank ("Customer") and is effective on the date both parties sign the DPA ("Effective Date"). This DPA is part of ConvertKit's Terms of Service Agreement ("TOS") and is incorporated by reference herein.

1. Definitions

"Affiliate" means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with an entity.

"Business" under the CCPA means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners that collects consumers' personal information or on the behalf of which that information is collected and that alone, or jointly with others, determines the purposes and means of the processing of consumers' personal information, that does business in the State of California, and that satisfies one or more of the following thresholds:

- a. Has annual gross revenues in excess of twenty-five million dollars (\$25,000,000), as adjusted pursuant to paragraph (5) of subdivision (a) of Section 1798.185 of the CCPA.
- b. Alone or in combination, annually buys, receives for the business's commercial purposes, sells, or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers, households, or devices.
- c. Derives 50 percent or more of its annual revenues from selling consumers' personal information.
- d. "Data Privacy Framework" means the EU-U.S. Data Privacy Framework, the UK Extension to the EU-U.S. Data Privacy Framework, and the Swiss-U.S. Data Privacy Framework.

- 1.** "CCPA" means the California Consumer Privacy Act.

"Controller" under the GDPR means the natural or legal person, public authority, agency, or any other body which alone or jointly with others determines the purposes and means of the Processing of personal data.

"Customer Data" means any Personal Data that ConvertKit Processes on behalf of the Customer as a Data Processor and/or Service Provider in the course of providing its Services.

"Data Breach" means any unauthorized or unlawful breach of security that leads to the accidental or unlawful destruction, damage, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored, or otherwise Processed.

"Data Privacy Framework" means the EU-U.S. Data Privacy Framework, the UK Extension to the EU-U.S. Data Privacy Framework, and the Swiss-U.S. Data Privacy Framework.

"Data Protection Laws" means all data protection and privacy laws and regulations of the EU, EEA and their member states, Switzerland, the United Kingdom, the State of California, and, as applicable, other countries and U.S. state laws, applicable to the Processing of Personal Data under the TOS and DPA.

"Data Subject" means the identified or identifiable person to whom Personal Data relates.

"EEA" means, for the purposes of this DPA, the European Economic Area and Switzerland.

"GDPR" means the UK General Data Protection Regulation and Regulation (EU) 2016/679 of the European Parliament and 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 an identified or identifiable natural person.

"Process," "Processed," "Processes," and "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" under the GDPR means a natural or legal person, public authority, agency, or any other body which Processes Personal Data on behalf of the controller.

"Service Provider" under the CCPA means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that processes information on behalf of a business and to which the business discloses a consumer's personal information for a business purpose pursuant to a written contract, provided that the contract prohibits the entity receiving the information from retaining, using, or disclosing the personal information for any purpose other than for the specific purpose of performing the services specified in the contract for the business, or as otherwise permitted by this title, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in the contract with the business.

"Services" means any product or service provided by ConvertKit pursuant to ConvertKit's Terms of Service Agreement ("TOS").

"Standard Contractual Clauses" ("SCCs") mean the standard contractual clauses for processors as approved by the European Commission and Swiss Federal Data Protection Authority.

"Subprocessor" means any third-party Processor engaged by ConvertKit.

"TOS" means ConvertKit's Terms of Service Agreement which governs the provision of Services to Customer

"UK International Data Transfer Agreement" ("UK IDTA") means the international data transfer agreement as approved by the UK Information Commissioner's Office.

2. Applicability of this DPA

a. This DPA applies to:

- I. EU/EEA, UK, and/or Swiss Customers Processing Personal Data on behalf of EU/EEA, UK, and/or Swiss Data Subjects;
- II. Businesses subject to the CCPA that Process Personal Data of California residents;
- III. Customers Processing Personal Data on behalf of Data Subjects in a country and/or countries with Data Protection Laws applicable to the Processing of Personal Data under the TOS and DPA;
- IV. and/or Customers Processing Personal Data on behalf of Data Subjects in a U.S. state or states with Data Protection Laws applicable to the Processing of Personal Data under the TOS and DPA. Customer represents that:

b. Customer represents that:

- I. Customer Processes Personal Data on behalf of EU/EEA, UK, and/or Swiss Data Subjects;
- II. Customer is a Business subject to the CCPA that Processes Personal Data of California residents;
- III. Customer Processes Personal Data on behalf of Data Subjects in a country and/or countries with Data Protection Laws applicable to the Processing of Personal Data under the TOS and DPA; and/or
- IV. Customer Processes Personal Data on behalf of Data Subjects in a U.S. state or states with Data Protection Laws applicable to the Processing of Personal Data under the TOS and DPA.

If Customer signs the DPA but does not meet the requirements in this Section 2 of the DPA, it constitutes a misrepresentation, is a breach of the terms of the DPA, and the DPA is voidable by ConvertKit.

3. Roles of Parties

- a. Customer is the Controller under the GDPR and/or other applicable Data Protection Laws, and a Business under the CCPA. ConvertKit is the Processor under the GDPR and/or other applicable Data Protection Laws, and a Service Provider under the CCPA. ConvertKit engages Subprocessors according to the terms of this DPA.

4. Customer's Processing of Personal Data

- a. Customer is responsible for the control of Personal Data and will remain the Controller and/or Business for purposes of ConvertKit's Services, the TOS, and DPA. Customer is responsible for complying with its obligations as Controller and/or Business, in particular for justification of any transmission of Personal Data to ConvertKit (including providing any required notices and obtaining any required consents), and for its decisions and actions concerning the Processing and use of Customer Data.
- b. Except as provided in this DPA, Customer is responsible for its secure use of the Services, including securing its account authentication credentials, protecting the security of Customer Data when in transit to and from the Services, and taking all appropriate steps to securely encrypt and/or backup all Customer Data uploaded to the Services.

5. ConvertKit's Processing of Personal Data

- a. ConvertKit shall Process Customer Data only for the purposes described in the TOS and this DPA and in accordance with Customer's documented lawful instructions. ConvertKit and Customer agree that the TOS and this DPA set out the Customer's complete and final instructions to ConvertKit in relation to the Processing of Customer Data and Processing outside the scope of these instructions shall require prior written agreement by ConvertKit and Customer.

6. Details of ConvertKit's Data Processing

- a. Nature and Purpose of Processing: ConvertKit will Process Customer Data as necessary to perform the Services and ConvertKit's obligations under the TOS and DPA or as otherwise agreed in writing by ConvertKit and Customer.
- b. Subject Matter of Processing: The subject matter of the Processing under this DPA is the Customer Data.
- c. Duration of Processing: ConvertKit will Process Customer Data for the duration of the TOS unless otherwise agreed upon in writing by ConvertKit and Customer.
- d. Categories of Data Subjects:
 - I. Any individual accessing and/or using the Services through the Customer's account ("Users"); and
 - II. Any individual whose email address is included in the Customer's distribution list; whose information is stored on or collected via the Services; or to whom Users send emails or otherwise engage or communicate with via the Services (collectively, "Subscribers").
- e. Types of Customer Data:
 - i. Customers, Users, and Subscribers: identification and contact data (name, date of birth, gender, address, title, contact details, username, or other demographic information); financial information (credit card details,

account details, payment information); employment details (employer, job title, geographic location, area of responsibility), IT information (IP address, usage data, cookies data, online navigation data, location data, browser data, access device information); personal interests or preferences (purchase history, marketing preferences, website preferences, publicly available social media profile information).

- f. Customer agrees that in connection with the performance of the Services, ConvertKit employs the use of cookies, unique identifiers, web beacons, and similar tracking technologies. Customer shall maintain notice, consent, opt-in and opt-out mechanisms as required by the Data Privacy Framework and/or Data Protection Laws to enable ConvertKit to employ tracking technologies lawfully on, and collect data from, the devices of Subscribers in accordance with and as described in the ConvertKit Cookie Policy.
- g. Notwithstanding anything to the contrary in the TOS and DPA, Customer agrees that ConvertKit shall have the right to use and disclose data relating to the operation, support, and/or use of the Services for its legitimate business purposes, such as billing, account management, technical support, product development, and sales and marketing. To the extent that any such data is considered Personal Data under the Data Privacy Framework and/or Data Protection Laws, ConvertKit is the Controller of such data and accordingly shall Process such data in accordance with ConvertKit's Privacy Policy, the Data Privacy Framework, and Data Protection Laws.

7. Data Subject Requests

- a. ConvertKit's Services provide Customer with controls to retrieve, correct, delete, or restrict Customer Data, which Customer may use in connection with its obligations under the Data Privacy Framework and/or Data Protection Laws, including responding to requests from data protection authorities or Data Subjects. Requests from Data Subjects may include the Data Subject's right of access, right to rectification, right to restriction of Processing, right to erasure ("right to be forgotten"), right to data portability, right to object to the Processing, and right to not be subject to automated decision-making. To the extent that Customer is unable to independently access the relevant Customer Data within the Services, ConvertKit will, at Customer's expense, provide reasonable assistance to help Customer respond to requests from Data Subjects or data protection authorities relating to the Processing of Personal Data under the DPA. In the event any request is made directly to ConvertKit, ConvertKit will not respond to the request directly without Customer's prior authorization, unless legally compelled to do so. If ConvertKit is required to respond to a request, ConvertKit will promptly notify Customer and provide it with a copy of the request unless legally prohibited from doing so.
- b. If a law enforcement agency sends ConvertKit a demand for Customer Data – for example, through a subpoena or court order – ConvertKit will attempt to redirect the law enforcement agency to request that data directly from

Customer. As part of this effort, ConvertKit may provide Customer's basic contact information to the law enforcement agency. If compelled to disclose Customer Data to a law enforcement agency, ConvertKit will give Customer reasonable notice of the demand to allow Customer to seek a protective order or other appropriate remedy unless ConvertKit is legally prohibited from doing so.

- c. To the extent ConvertKit is required by law, ConvertKit will, at Customer's expense, provide reasonably requested information regarding the Services to enable Customer to carry out data protection impact assessments or prior consultations with data protection authorities as required by the Data Privacy Framework and/or Data Protection Laws.

8. Subprocessors

- a. Customer agrees that ConvertKit may engage Subprocessors to Process Customer Data on Customer's behalf in connection with ConvertKit's provision of its Services.
- b. ConvertKit shall enter into an agreement with Subprocessors imposing data protection obligations that require Subprocessors to protect Customer Data to the standard required by the Data Privacy Framework and/or Data Protection Laws.
- c. ConvertKit is responsible for its compliance with this DPA and for any acts or omissions of its Subprocessors that cause ConvertKit to breach any of its obligations under this DPA.
- d. Customer may request that ConvertKit provide information related to Subprocessors' implementation of the data protection obligations required by the Data Privacy Framework and/or Data Protection Laws, including relevant terms of ConvertKit's agreement with Subprocessors. If the agreement contains confidential information, ConvertKit may provide a redacted version.

9. Changes to Subprocessors

- a. ConvertKit maintains a list of Subprocessors that Process Personal Data of its Customers and will provide a copy of that list to Customer upon request. If Customer has requested a list of ConvertKit's Subprocessors, ConvertKit will notify Customer via email if it adds Subprocessors at least ten (10) days prior to any such changes.
- b. Customer may object in writing to ConvertKit's addition of a new Subprocessor within five (5) business days of such notice, provided that such objection is based on reasonable grounds relating to the Data Privacy Framework and/or Data Protection Laws. In such event, ConvertKit and Customer shall discuss such concerns in a good faith effort to achieve resolution. If resolution is impossible, Customer may terminate the TOS by providing written notice to ConvertKit. ConvertKit will return any prepaid but unused Customer fees for the period following the effective date of termination.

10. ConvertKit Personnel

- a. ConvertKit shall ensure that any person authorized to Process Personal Data is informed of the confidential nature of Personal Data and has executed written confidentiality agreements.

11. Return or Deletion of Customer Data

- a. Upon termination or expiration of the TOS, ConvertKit shall, at Customer's request, delete or return to Customer all Customer Data in its possession or control except:
 - i. Customer Data that ConvertKit is required by law to retain; and
 - ii. Customer Data archived on back-up systems which ConvertKit will securely isolate and protect from any further Processing, except to the extent required by law.
- b. Customer is responsible for any costs arising from the return or deletion of Customer Data after the termination or expiration of the TOS.

12. Security

- a. ConvertKit shall maintain appropriate technical and organizational measures for protection of the security (including protection against unauthorized or unlawful Processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Customer Data), confidentiality, and integrity of Customer Data, as set forth in ConvertKit's Security Policy, located at <https://convertkit.com/security>. ConvertKit regularly monitors compliance with these measures. ConvertKit's Security Policy will be updated from time to time in accordance with this DPA.
- b. Customer agrees it is responsible for reviewing the information made available by ConvertKit relating to its data security and making an independent determination as to whether the Services meet Customer's requirements and legal obligations under the Data Privacy Framework and/or Data Protection Laws.
- c. Upon Customer's written request not more than once per year, and subject to the confidentiality obligations set forth in the TOS and DPA, ConvertKit shall make available to Customer that is not a competitor of ConvertKit, information necessary to confirm ConvertKit's compliance with its Security Policy and this DPA.

13. Data Breach Response

- a. Upon becoming aware of a Data Breach, ConvertKit will notify Customer without undue delay and provide timely information relating to the Data Breach as it becomes known or as is reasonably requested by Customer. The obligations herein shall not apply to incidents that are caused by Customer or Customer's Users.

14. International Transfers

- a. If ConvertKit Processes any Customer Data protected by the Data Protection Laws under the TOS and DPA and/or that originates from the EU/EEA, UK, Switzerland, in a country that has not been designated by the European Commission, the UK Information Commission's Office (ICO), or Swiss Federal Data Protection Authority (as applicable) as providing an adequate level of protection for Personal Data, the parties agree that:
 - i. ConvertKit shall be deemed to provide adequate protection (within the meaning of the Data Protection Laws) for any such Customer Data by having self-certified its compliance with the Data Privacy Framework.
 - ii. For Customers in the UK, ConvertKit agrees to abide by and process Customer Data protected by Data Protection Laws in compliance with the Standard Contractual Clauses ("SCCs") pursuant to Decision 2004/915/EC and 2010/87/EU until the ICO adopts the new UK International Data Transfer Agreement (UK IDTA). After the new UK IDTA goes into effect, ConvertKit agrees to abide by and process Customer Data protected by Data Protection Laws in compliance with the UK IDTA for Customers in the UK. For Customers in the EU/EEA or Switzerland, ConvertKit agrees to abide by and process Customer Data protected by Data Protection Laws in compliance with the SCCs adopted by the European Commission on June 4, 2021. The SCCs and UK IDTA are incorporated in full by reference herein. To request a copy of the SCCs and/or UK IDTA, please email us at legal@convertkit.com. For purposes of the SCCs and UK IDTA, ConvertKit agrees that it is the "data importer" and Customer is the "data exporter" under the SCCs and UK IDTA (notwithstanding that Customer may itself be an entity located outside the EU/EEA, UK, or Switzerland). The parties further agree that the SCCs and/or UK IDTA will apply to Customer Data that is transferred via the Services from the EU/ EEA, UK, or Switzerland to outside the EU/EEA, UK, or Switzerland, either directly or via onward transfer, to any country or recipient not recognized by the European Commission, ICO, or Swiss Federal Data Protection Authority as providing an adequate level of protection for personal data (as described in the Data Protection Laws) and not covered by ConvertKit's self-certification to the Data Privacy Framework.
- b. The parties agree that the international data transfer solution identified in Section 13(a) shall not apply if and to the extent that ConvertKit adopts an alternative data export solution for the lawful transfer of Personal Data (as recognized by the Data Protection Laws) outside of the EU/EEA, UK, or Switzerland, or other applicable countries, in which event, the alternative data export solution shall apply instead, but only to the extent that the alternative data export solutions extends to the regions to which Personal Data is transferred.

15. Miscellaneous

- a. ConvertKit and Customer agree that this DPA replaces any existing DPA the

parties may have previously entered into in connection with the Services.

- b. Except for the changes made by this DPA, the TOS remains unchanged and in full force and effect. If there is any conflict between this DPA and the TOS, the relevant terms of this DPA take precedence.
- c. Any claims brought under or in connection with this DPA are subject to the terms and conditions, including but not limited to, the exclusions and limitations set forth in the TOS.
- d. No one other than a party to this DPA, its successors, and permitted assignees have any right to enforce any of its terms.
- e. Any claims against ConvertKit or its Affiliates under this DPA shall be brought solely against the entity that is a party to the DPA. In no event shall any party limit its liability with respect to any individual's data protection rights under this DPA or otherwise. Customer further agrees that any regulatory penalties incurred by ConvertKit in relation to the Customer Data that arise as a result of, or in connection with, Customer's failure to comply with its obligations under this DPA, the Data Privacy Framework, or any applicable Data Protection Laws shall count toward and reduce ConvertKit's liability under the DPA as if it were liability to the Customer under the DPA.
- f. This DPA shall be governed by and construed in accordance with governing law and jurisdiction provisions in the TOS, unless required otherwise by the Data Privacy Framework and/or applicable Data Protection Laws.

IN WITNESS WHEREOF, the parties have caused this DPA to be executed by their authorized representative:

CONVERTKIT, INC.

By: 

Name: Nathan Barry

Title: CEO

Date: February 25, 2024

CUSTOMER: Matthias Frank

By: 

Name: Matthias Frank

Title: Mr.

Date: February 25, 2024

