

Kinsta Inc. Data Processing Addendum

Last updated: October 25, 2022

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1. Introduction and Scope

1. This Data Processing Addendum (“**DPA**”) is an addendum to the Terms of Service (“**Terms**”). All provisions of the Terms apply to and are incorporated into this DPA, but if there is a conflict between this DPA and any provisions in the Terms, then the provisions of this DPA shall control.
2. This DPA only applies to Clients if and to the extent (a) Kinsta Processes Client Personal Data (defined below) for or on behalf of the Client pursuant to the Agreement (b) and the Data Protection Laws apply to such Client Personal Data.
3. **Updates to the DPA.** We reserve the right to make changes to this DPA at any time at our sole discretion. If we make changes to this DPA, we will provide notice of such changes by revising the date at the top of this DPA. Your continued use of our Services following notification of changes will constitute your acceptance of such changes. Please periodically review this DPA and check for any updates.

2. Definitions

Capitalized terms which are not defined in this DPA shall have the meaning provided elsewhere in the Agreement. In addition, the following defined terms apply solely with respect to this DPA.

1. “**Controller**”, “**Processor**”, “**Data Subject**”, “**Processing**”, “**Personal Data**”, and “**Personal Data Breach**” shall have the meanings ascribed to them in Data Protection Laws.
2. “**Client Personal Data**” means any End User Personal Data subject to the Data Protection Laws that Client provides, transfers, or makes accessible to Kinsta in connection with the Services.

3. **“Data Protection Laws”** means the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 (“**GDPR**”), the UK Data Protection Act 2018 and the UK GDPR, the Swiss Data Protection Act, any applicable national implementing legislation of such laws, and in each case, as amended, replaced, or superseded from time to time.

3. Roles of the Parties

1. Client is the Controller and Kinsta is the Processor with respect to Client Personal Data. Kinsta shall only Process Client Personal Data in accordance with Client’s documented instructions, which include the provisions of the Agreement, unless otherwise required to comply with any Data Protection Laws. We will inform you if, in our opinion, your instructions violate the Data Protection Laws.
2. Client and Kinsta shall comply with the Data Protection Laws. Client shall obtain any required authorizations, consents, releases, or permissions, and provide all required privacy notices, regarding the Client Personal Data. For the avoidance of doubt, Client shall have sole responsibility for the accuracy, quality, and legality of all Client Personal Data and the bases on which it is collected from the Data Subject.

4. Nature, Purpose, and Duration of Processing

1. Kinsta will Process Client Personal Data as necessary to perform the Services - which is generally limited to passive hosting of Client Applications and related support - or to protect Kinsta’s legal rights, for the duration of the Agreement, unless otherwise agreed upon in writing.
2. Client’s transfer of Client Personal Data to Kinsta in connection with the Services is determined and controlled by Client in its sole discretion.
3. Kinsta may Process the following categories of Client Personal Data: any Personal Data collected, used, or otherwise Processed from End Users of Client Applications.
4. Kinsta may Process Client Personal Data from the following categories of Data Subjects: End Users of Client Applications.

5. Cross-border Transfers

1. You choose the Google Cloud Platform data center(s) where your Client Applications will be hosted. You acknowledge, agree, and understand that (a) all of your Client Personal Data will be automatically transferred and stored in the Google data center you choose, and (b) Client Personal Data may be transferred from the European Economic Area (“EEA”), the United Kingdom, or Switzerland to the country where the Google data center is located, depending on your choice.
2. Kinsta and Google have agreed to the Google Cloud Platform Data Processing and Security Terms and EU Model Contract Clauses. For additional information, see Google’s commitments regarding cross-border transfers in the “International Data Transfer” section here: <https://cloud.google.com/security/gdpr/>.
3. Client authorizes the transfer of Client Personal Data to any jurisdiction outside the EEA, including the United States, for the purpose of providing the Services. As the controller and/or exporter of Client Personal Data, Client is responsible for ensuring that any such transfers comply with the Data Protection Laws.

6. Sub-processors

1. Kinsta engages third-party subcontractors that Process Client Personal Data (“**Sub-processors**”) for the purposes of providing the Services. A current list of Sub-processors is available in Appendix A of Kinsta’s online DPA, located here: <https://kinsta.com/legal/data-processing-addendum/> (the “**Sub-processor List**”). Client authorizes Kinsta to engage these Sub-processors for the purpose of providing the Services.
2. Kinsta may update the Sub-processor List from time to time, and such updates shall be the sole means of providing notice of Sub-processor changes to Client. Client is responsible for regularly checking and reviewing the Sub-processor List. Client’s failure to object in writing to a new Sub-processor within fourteen (14) days of Kinsta’s posting of the new Sub-processor on the Sub-processor List shall constitute Client’s authorization of the new Sub-processor.

3. If Kinsta determines in its sole discretion that it cannot reasonably accommodate Client's timely objection to a Sub-processor, upon notice from Kinsta, Client may choose to terminate the Agreement pursuant to the termination provisions in the Terms of Service, which shall be Client's sole and exclusive remedy.
4. Kinsta shall impose obligations on its Sub-processors that are the same as or substantially equivalent to those set out in this DPA by way of written contract. Kinsta shall be liable to Client for the Sub-processors' performance of its data protection obligations with respect to Client Personal Data.

7. Security and Impact Assessments

1. Kinsta shall ensure that its personnel are subject to binding obligations of confidentiality with respect to Client Personal Data.
2. Taking into account the state of the art, the costs of implementation and the nature, scope, context, and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects, Kinsta shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk.
3. Taking into account the nature of Processing and the information available to Kinsta, Kinsta shall assist the Client in ensuring compliance with Client's obligations under the Data Protection Laws with respect to security, impact assessments, and consultations with supervisory authorities or regulators.

8. Personal Data Breach

1. Taking into account the nature of Processing and the information available to Kinsta, Kinsta shall assist the Client in ensuring compliance with Client's obligations under the Data Protection Laws with respect to a Personal Data Breach.
2. In the event of a discovered Personal Data Breach, Kinsta shall provide prompt notice to Client's technical and account contacts using those means established for routine account-related communications.
3. Our notice shall include the following information to the extent it is reasonably available to Kinsta at the time of the notice, and Kinsta shall update its notice as additional

information becomes reasonably available: (a) the dates and times of the Personal Data Breach; (b) the basic facts that underlie the discovery of the Personal Data Breach, or the decision to begin an investigation into a suspected Personal Data Breach, as applicable; (c) a description of the Client Personal Data involved in the Personal Data Breach, either specifically, or by reference to the data set(s), and (d) the measures planned or underway to remedy or mitigate the vulnerability giving rise to the Personal Data Breach.

9. Data Subject Requests

1. Taking into account the nature of the Processing, Kinsta shall assist Client by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the Client's obligation to respond to requests for exercising the Data Subject's rights under the Data Protection Laws.
2. Kinsta will promptly notify Client if we receive a request from a Data Subject to invoke their rights with respect to Client Personal Data, unless otherwise prohibited by applicable law; and, except to the extent required by applicable law, we will not independently take any action in response to a request from a Data Subject without Client's prior written instruction.

10. Audit and Inspection

1. Subject to and conditioned on a written confidentiality and non-disclosure agreement, Kinsta shall provide Client with information reasonably necessary to demonstrate compliance with the obligations set forth in this DPA.
2. Any audits shall be (i) subject to and conditioned on reasonable advance written notice, not less than sixty (60) days, to Kinsta; (ii) subject to and conditioned on a written confidentiality and non-disclosure agreement and a detailed written audit plan reviewed and pre-approved by Kinsta; (iii) limited to once every three (3) calendar years; (iv) at Client's sole cost and expense; (v) limited in scope and purpose to evaluate a specifically identified suspected failure by Kinsta to comply with the provisions of this DPA and only after Client has exhausted all other reasonable means as determined by

Kinsta; and (vi) in the virtual or physical presence of a Kinsta representative without unreasonably disrupting Kinsta's business operations.

11. Deletion or Return of Client Personal Data

Upon proper termination of the Agreement and at the written direction of the Client, Kinsta shall take reasonable measures to delete Client Personal Data or return Client Personal Data and copies thereof to the Client, subject to applicable laws or other Kinsta obligations requiring the continued storage of the Client Personal Data by Kinsta.

Customer Signature: _____

Customer Legal Name: _____

Print Name: _____

Title: _____

Date: _____

Kinsta Inc. Signature: _____

Print Name: Jonathan Penland

Title: Chief Operating Officer

Date: _____

Appendix A

List of Sub-processors

- Cloudflare: We use Cloudflare to secure and improve the performance of the Services.
- Google Cloud Platform: We use Google Cloud Platform host and secure Client Applications and store data related to Client Applications.
- Google Workspace: We use Google Workspace applications to process email communication and manage online documents.
- Intercom: We use Intercom to communicate with our customers and provide support.
- Mailchannels: Mailchannels is an SMTP provider that sends transactional emails from Client Applications.
- Migrate Guru: Our Migrations team may use Migrate Guru to migrate Client Applications for Clients subscribed to managed WordPress hosting plans, with Client permission.