

Kitemetrics Data Processing and Security Terms Last Modified: May 24, 2018

The customer agreeing to these terms (“Customer”), and Kitefaster LLC, or any other entity that directly or indirectly controls, is controlled by, or is under common control with Kitefaster LLC (as applicable, “Kitefaster”), have entered into an agreement under which Kitefaster has agreed to provide the “Kitemetrics” or “Kitemetrics SDK” products or services to Customer (as amended from time to time, the “Agreement”).

These Kitemetrics Data Processing and Security Terms, including their appendices, (the “Terms”) will be effective and replace any previously applicable data processing and security terms as from the Terms Effective Date (as defined below). These Terms supplement the Agreement.

1. Introduction

These Terms reflect the parties’ agreement with respect to the terms governing the processing and security of Customer Personal Data under the Agreement.

2. Definitions

2.1 Capitalized terms used but not defined in these Terms have the meanings set out in the Agreement. In these Terms, unless stated otherwise:

Account has the meaning given in the Agreement or, if no such meaning is given, means Customer’s account for the Services.

Additional Product means a product, service or application provided by Kitefaster or a third party that: (a) is not part of the Services; and (b) is accessible for use within the user interface of the Services or is otherwise integrated with the Services.

Admin Console has the meaning given in the Agreement or, if not such meaning is given, means the online console(s) and/or tool(s) provided by Kitefaster to Customer for administering the Services.

Affiliate has the meaning given in the Agreement or, if not such meaning is given, means any entity that directly or indirectly controls, is controlled by, or is under common control with, a party.

Customer Data has the meaning given to “Developer Data” in the Agreement or, if no such meaning is given, means data provided by or on behalf of

Customer or Customer End Users via the Services (except support services, if applicable) under the Account.

Customer End Users has the meaning given to “End Users” in the Agreement or, if no such meaning is given, means the users of Customer’s services (for example, the users of a Customer app).

Customer Personal Data means the personal data contained within the Customer Data.

Data Incident means a breach of Kitefaster’s security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Personal Data on systems managed by or otherwise controlled by Kitefaster. “Data Incidents” will not include unsuccessful attempts or activities that do not compromise the security of Customer Personal Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.

Data Protection Legislation means, as applicable: (a) the GDPR; and/or (b) the Federal Data Protection Act of 19 June 1992 (Switzerland).

EEA means the European Economic Area.

GDPR means 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, and repealing Directive 95/46/EC.

Infrastructure Provider has the meaning given in Section 5.4 (Infrastructure Provider).

Notification Email Address means the email address used by the Customer to create an account on Kitemetrics.

Security Measures has the meaning given in Section 7.1.1 (Kitefaster’s Security Measures).

Services has the meaning given to “Services” or “Kitemetrics SDK Services” (as applicable) in the Agreement.

Subprocessors means third parties authorized under these Terms to have logical access to and process Customer Personal Data in order to provide parts of the Services.

Term means the period from the Terms Effective Date until the end of Kitefaster’s provision of the Services, including, if applicable, any period during which provision of the Services may be suspended and any post-termination period during which Kitefaster may continue providing the Services for transitional purposes.

Terms Effective Date means, as applicable:

- (a) 25 May 2018, if the Customer agreed to these Terms prior to or on such date; or
- (b) the date on which Customer agreed to these Terms, if such date is after 25 May 2018.

Third Party Subprocessors has the meaning given in Section 11.1 (Consent to Subprocessor Engagement).

2.2 The terms “personal data”, “data subject”, “processing”, “controller”, “processor” and “supervisory authority” as used in these Terms have the meanings given in the GDPR.

3. Duration of these Terms

These Terms will take effect on the Terms Effective Date and, notwithstanding expiry of the Term, will remain in effect until, and automatically expire upon, deletion of all Customer Personal Data by Kitefaster as described in these Terms.

4. Scope of Data Protection Legislation

4.1 Application of European Legislation. These Terms will only apply to the extent that the Data Protection Legislation applies to the processing of Customer Personal Data, including if:

(a) the processing is carried out in the context of the activities of an establishment of Customer in the territory of the EEA; and/or

(b) the Customer Personal Data is personal data relating to data subjects who are in the EEA and the processing relates to the offering to them of goods or services in the EEA or the monitoring of their behavior in the EEA.

5. Processing of Data

5.1 Roles and Regulatory Compliance; Authorization.

5.1.1 Processor and Controller Responsibilities. The parties acknowledge and agree that:

(a) the subject matter and details of the processing are described in Appendix 1;

(b) Kitefaster is a processor of that Customer Personal Data under the Data Protection Legislation;

(c) Customer is a controller or processor, as applicable, of that Customer Personal Data under Data Protection Legislation; and

(d) each party will comply with the obligations applicable to it under the Data Protection Legislation with respect to the processing of that Customer Personal Data.

5.1.2 Authorization by Third Party Controller. If Customer is a processor, Customer warrants to Kitefaster that Customer's instructions and actions with respect to that Customer Personal Data, including its appointment of Kitefaster as another processor, have been authorized by the relevant controller.

5.2 Scope of Processing

5.2.1 Customer's Instructions. By entering into these Terms, Customer instructs Kitefaster to process Customer Personal Data only in accordance with applicable law: (a) to provide the Services; (b) as further specified via Customer's use of the Services (including the Admin Console and other functionality of the Services); (c) as documented in the form of the Agreement, including these Terms; and (d) as further documented in any other written instructions given by Customer and acknowledged by Kitefaster as constituting instructions for purposes of these Terms.

5.2.2 Kitefaster's Compliance with Instructions. Kitefaster will comply with the instructions described in Section 5.2.1 (Customer's Instructions) (including with regard to data transfers) unless EU or EU Member State law to which Kitefaster is subject requires other processing of Customer Personal Data by Kitefaster, in which case Kitefaster will inform Customer (unless that law prohibits Kitefaster from doing so on important grounds of public interest) via the Notification Email Address.

5.3 Additional Products. If Customer uses an Additional Product, the Services may allow that Additional Product to access Customer Personal Data as required for the interoperation of the Additional Product with the Services. For

clarity, these Terms do not apply to the processing of personal data in connection with the provision of any Additional Product used by Customer, including personal data transmitted to or from that Additional Product.

5.4 Infrastructure Provider. Customer authorizes the engagement of DigitalOcean, LLC (“ Infrastructure Provider ”) to provide underlying infrastructure services in the provision of the Services. Infrastructure Provider’s role includes processing Customer Personal Data but Infrastructure Provider will not be a Third Party Subprocessor for the purposes of these Terms.

6. Data Deletion

6.1 Deletion by Customer. Kitefaster will enable Customer to delete Customer Personal Data during the Term in a manner consistent with the functionality of the Services. To delete Customer Personal Data email support at support@kitefaster.com. If Customer uses the Services to delete any Customer Personal Data during the Term and that Customer Personal Data cannot be recovered by Customer, this use will constitute an instruction to Kitefaster to delete the relevant Customer Personal Data from Kitefaster’s systems in accordance with applicable law. Kitefaster will comply with this instruction as soon as reasonably practicable and within a maximum period of 180 days, unless EU or EU Member State law requires storage.

6.2 Deletion on Termination. On expiry of the Term, Customer instructs Kitefaster to delete all Customer Personal Data (including existing copies) from Kitefaster’s systems in accordance with applicable law. Kitefaster will, after a recovery period of up to 30 days following such expiry, comply with this instruction as soon as reasonably practicable and within a maximum period of 180 days, unless EU or EU Member State law requires storage. Without prejudice to Section 9.1 (Access; Rectification; Restricted Processing; Portability), Customer acknowledges and agrees that Customer will be responsible for exporting, before the Term expires, any Customer Personal Data it wishes to retain afterwards.

7. Data Security

7.1 Kitefaster’s Security Measures, Controls and Assistance.

7.1.1 Kitefaster’s Security Measures. Kitefaster will implement and maintain technical and organizational measures to protect Customer Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access as described in Appendix 2 (the “ Security Measures ”). Kitefaster may update or modify the Security Measures from time to time

provided that such updates and modifications do not result in the degradation of the overall security of the Services.

7.1.2 Security Compliance by Kitefaster Staff . Kitefaster will take appropriate steps to ensure compliance with the Security Measures by its employees, contractors and Subprocessors to the extent applicable to their scope of performance, including ensuring that all persons authorized to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

7.1.3 Kitefaster's Security Assistance. Customer agrees that Kitefaster will (taking into account the nature of the processing of Customer Personal Data and the information available to Kitefaster) assist Customer in ensuring compliance with any of Customer's obligations in respect of security of personal data and personal data breaches, including if applicable Customer's obligations pursuant to Articles 32 to 34 (inclusive) of the GDPR, by:

(a) implementing and maintaining the Security Measures in accordance with Section 7.1.1 (Kitefaster's Security Measures);

(b) complying with the terms of Section 7.2 (Data Incidents).

7.2. Data Incidents

7.2.1 Incident Notification. If Kitefaster becomes aware of a Data Incident, Kitefaster will: (a) notify Customer of the Data Incident promptly and without undue delay after becoming aware of the Data Incident; and (b) promptly take reasonable steps to minimize harm and secure Customer Personal Data.

7.2.2 Details of Data Incident. Notifications made pursuant to this section will describe, to the extent possible, details of the Data Incident, including steps taken to mitigate the potential risks and steps Kitefaster recommends Customer take to address the Data Incident.

7.2.3 Delivery of Notification. Notification(s) of any Data Incident(s) will be delivered to the Notification Email Address or, at Kitefaster's discretion, by direct communication (for example, by phone call or an in-person meeting). Customer is solely responsible for ensuring that the Notification Email Address is current and valid.

7.2.4 No Assessment of Customer Personal Data by Kitefaster. Kitefaster will not assess the contents of Customer Personal Data to identify information subject to any specific legal requirements. Customer is solely responsible for

complying with incident notification laws applicable to Customer and fulfilling any third party notification obligations related to any Data Incident(s).

7.2.5 No Acknowledgement of Fault by Kitefaster. Kitefaster's notification of or response to a Data Incident under this Section 7.2 (Data Incidents) will not be construed as an acknowledgement by Kitefaster of any fault or liability with respect to the Data Incident.

7.3 Customer's Security Responsibilities and Assessment.

7.3.1 Customer's Security Responsibilities. Customer agrees that, without prejudice to Kitefaster's obligations under Section 7.1 (Kitefaster's Security Measures, Controls and Assistance) and Section 7.2 (Data Incidents):

(a) Customer is solely responsible for its use of the Services, including:

(i) making appropriate use of the Services to ensure a level of security appropriate to the risk in respect of the Customer Personal Data;

(ii) securing the account authentication credentials, systems and devices Customer uses to access the Services;

(iii) backing up its Customer Personal Data; and

(b) Kitefaster has no obligation to protect Customer Personal Data that Customer elects to store or transfer outside of Kitefaster's and its Subprocessors' systems (for example, offline or on-premise storage).

7.3.2 Customer's Security Assessment.

(a) Customer is solely responsible for evaluating for itself whether the Services, the Security Measures and Kitefaster's commitments under this Section 7 (Data Security) will meet Customer's needs, including with respect to any security obligations of Customer under the Data Protection Legislation.

(b) Customer acknowledges and agrees that (taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of Customer Personal Data as well as the risks to individuals) the Security Measures implemented and maintained by Kitefaster as set out in Section 7.1.1 (Kitefaster's Security Measures) provide a level of security appropriate to the risk in respect of the Customer Personal Data.

8. Impact Assessments and Consultations.

Customer agrees that Kitefaster will (taking into account the nature of the processing and the information available to Kitefaster) assist Customer in ensuring compliance with any obligations of Customer in respect of data protection impact assessments and prior consultation, including if applicable Customer's obligations pursuant to Articles 35 and 36 of the GDPR, by providing the information contained in the Agreement including these Terms.

9. Data Subject Rights; Data Export

9.1 Access; Rectification; Restricted Processing; Portability. During the Term, Kitefaster will, in a manner consistent with the functionality of the Services, enable Customer to access, rectify and restrict processing of Customer Personal Data, including via the deletion functionality provided by Kitefaster as described in Section 6.1 (Deletion by Customer), and to export Customer Personal Data.

9.2 Data Subject Requests

9.2.1 Customer's Responsibility for Requests. During the Term, if Kitefaster receives any request from a data subject in relation to Customer Personal Data, Kitefaster will advise the data subject to submit their request to Customer and Customer will be responsible for responding to any such request including, where necessary, by using the functionality of the Services.

9.2.2 Kitefaster's Data Subject Request Assistance. Customer agrees that Kitefaster will (taking into account the nature of the processing of Customer Personal Data) assist Customer in fulfilling any obligation to respond to requests by data subjects, including if applicable Customer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR, by complying with the commitments set out in Section 9.1 (Access; Rectification; Restricted Processing; Portability) and Section 9.2.1 (Customer's Responsibility for Requests).

10. Subprocessors

10.1 Consent to Subprocessor Engagement. Customer specifically authorizes Kitefaster to engage Kitefaster's Affiliates as Subprocessors. In addition, Customer generally authorizes Kitefaster to engage any other third parties as Subprocessors ("Third Party Subprocessors").

10.2 Information about Subprocessors. Information about Subprocessors, including their functions and locations, is available at: <https://kitemetrics.com/>

[subprocessors.html](#) (as may be updated by Kitefaster from time to time in accordance with these Terms).

10.3 Requirements for Subprocessor Engagement. When engaging any Subprocessor, Kitefaster will:

(a) ensure via a written contract that:

(i) the Subprocessor only accesses and uses Customer Personal Data to the extent required to perform the obligations subcontracted to it, and does so in accordance with the Agreement (including these Terms); and

(ii) if the GDPR applies to the processing of Customer Personal Data, the data protection obligations set out in Article 28(3) of the GDPR, as described in these Terms, are imposed on the Subprocessor; and

(b) remain fully liable for all obligations subcontracted to, and all acts and omissions of, the Subprocessor.

10.4 Opportunity to Object to Subprocessor Changes.

(a) When any new Third Party Subprocessor is engaged during the Term, Kitefaster will, at least 30 days before the new Third Party Subprocessor processes any Customer Personal Data, inform Customer of the engagement (including the name and location of the relevant subprocessor and the activities it will perform) either by sending an email to the Notification Email Address or via the Admin Console.

(b) Customer may object to any new Third Party Subprocessor by terminating the Agreement immediately upon written notice to Kitefaster, on condition that Customer provides such notice within 90 days of being informed of the engagement of the subprocessor as described in Section 11.4(a). This termination right is Customer's sole and exclusive remedy if Customer objects to any new Third Party Subprocessor.

11. Kitemetrics Data Protection; Processing Records

11.1 Kitefaster's Representative. Customer may contact a Kitefaster representative in relation to the exercise of its rights under these Terms via support@kitefaster.com (and/or via such other means as Kitefaster may provide from time to time).

11.2 Kitefaster's Processing Records. Customer acknowledges that Kitefaster is required under the GDPR to: (a) collect and maintain records of certain information, including the name and contact details of each processor and/or controller on behalf of which Kitefaster is acting and, where applicable, of such processor's or controller's local representative and data protection officer; and (b) make such information available to the supervisory authorities. Accordingly Customer will, where requested, provide such information to Kitefaster via the Admin Console or other means provided by Kitefaster, and will use the Admin Console or such other means to ensure that all information provided is kept accurate and up-to-date.

12. Liability

12.1 If the Agreement is governed by the laws of:

(a) a state of the United States of America, then, notwithstanding anything else in the Agreement, the total liability of either party towards the other party under or in connection with these Terms will be limited to the maximum monetary or payment-based amount at which that party's liability is capped under the Agreement (for clarity, any exclusion of indemnification claims from the Agreement's limitation of liability will not apply to indemnification claims under the Agreement relating to the Data Protection Legislation); or

(b) a jurisdiction that is not a state of the United States of America, then the liability of the parties under or in connection with these Terms will be subject to the exclusions and limitations of liability in the Agreement.

13. Effect of these Terms

Notwithstanding anything to the contrary in the Agreement, to the extent of any conflict or inconsistency between these Terms and the remaining terms of the Agreement, these Terms will govern.

14. Changes to these Terms

14.1 Changes to URLs . From time to time, Kitefaster may change any URL referenced in these Terms and the content at any such URL.

14.2 Changes to these Terms . Kitefaster may change these Terms if the change:

(a) is expressly permitted by these Terms, including as described in Section 15.1 (Changes to URLs);

(b) reflects a change in the name or form of a legal entity;

(c) is required to comply with applicable law, applicable regulation, a court order or guidance issued by a governmental regulator or agency; or

(d) does not: (i) result in a degradation of the overall security of the Services; (ii) expand the scope of, or remove any restrictions on, Kitefaster's processing of Customer Personal Data, as described in Section 5.2.2 (Kitefaster's Compliance with Instructions); and (iii) otherwise have a material adverse impact on Customer's rights under these Terms, as reasonably determined by Kitefaster.

15.3 Notification of Changes. If Kitefaster intends to change these Terms under Section 15.2(c) or (d), Kitefaster will inform Customer at least 30 days (or such shorter period as may be required to comply with applicable law, applicable regulation, a court order or guidance issued by a governmental regulator or agency) before the change will take effect by either: (a) sending an email to the Notification Email Address; or (b) alerting Customer via the Admin Console. If Customer objects to any such change, Customer may terminate the Agreement by giving written notice to Kitefaster within 90 days of being informed by Kitefaster of the change.

Appendix 1: Subject Matter and Details of the Data Processing

Subject Matter

Kitefaster's provision of the Services to Customer.

Duration of the Processing

The Term plus the period from the expiry of the Term until deletion of all Customer Personal Data by Kitefaster in accordance with these Terms.

Nature and Purpose of the Processing

Kitefaster will process Customer Personal Data for the purposes of providing the Services to Customer in accordance with these Terms.

Categories of Data

Data relating to individuals provided to Kitefaster via the Services, by (or at the direction of) Customer or by Customer End Users.

Data Subjects

Data subjects include the individuals about whom data is provided to Kitefaster via the Services by (or at the direction of) Customer or by Customer End Users.

Appendix 2: Security Measures

As from the Terms Effective Date, Kitefaster will implement and maintain the Security Measures set out in this Appendix 2. Kitefaster may update or modify such Security Measures from time to time provided that such updates and modifications do not result in the degradation of the overall security of the Services.

1. Personnel Security

Kitefaster personnel are required to conduct themselves in a manner consistent with the company's guidelines regarding confidentiality, business ethics, appropriate usage, and professional standards. Kitefaster conducts reasonably appropriate backgrounds checks to the extent legally permissible and in accordance with applicable local labor law and statutory regulations.

Personnel are required to execute a confidentiality agreement and must acknowledge receipt of, and compliance with, Kitefaster's confidentiality and privacy policies. Kitefaster's personnel will not process Customer Personal Data without authorization.

2. Infrastructure Provider Security

Details regarding the Data Center, Network Security, and Site Control security standards of the Infrastructure Provider are publicly available at <https://www.digitalocean.com/security/> (as may be modified or updated by the Infrastructure Provider from time to time).

3. Payment Data Security

Credit / debit card purchases for Kitemetrics services are processed by the third-party vendor Stripe. When our Customers provide their credit / debit card information on our website the data is sent to Stripe, i.e. the payment data is not stored on our systems. Details regarding Security at Stripe is available at <https://stripe.com/docs/security/stripe> (as may be modified or updated by the payment processor from time to time).