Data Processing Agreement (DPA)

This agreement is made on: _____

Between:

Spatie bv, having its registered office at Kruikstraat 22 bus 12, 2018 Antwerp, Belgium and registered in the Belgian Crossroads Bank for Enterprises under number 0809.387.596.

Hereinafter: “Mailcoach Cloud” And:

The customer, hereinafter: “the customer”

Hereinafter referred to collectively as “Parties” or each separately as “Party”;

Taking into consideration:

- Mailcoach Cloud is a subscription based email marketing platform. It can be used to send out email campaigns such as newsletters, as well as create automation processes and send transactional emails. The customer wishes to use the Mailcoach Cloud services.
- In the context of the underlying cooperation between the Parties, the customer acts as data controller with regard to the personal data contained in the Annex 1;
- In the context of the underlying cooperation between the Parties, the customer would like to commission Mailcoach Cloud to carry out the processing of the personal data in Annex 1.
- This Data Processing Agreement (DPA) is within the framework of the obligation arising from Article 28 of the General Data Protection Regulation 2016/679 of 27 April 2016 (hereinafter: “the Regulation”).

Agree on the following:

1. Meaning of terms

All terms used in this DPA shall have the common meaning as defined in the Regulation or as derived, in order, from the case law of the European Court of Justice, the Market Court, the Belgian Data Protection Authority, other European data protection authorities and courts.

2. Object

2.1 The DPA regulates the rights and obligations of the customer and Mailcoach Cloud when processing the personal data.

2.2 Mailcoach Cloud undertakes, as from the entry into force of the DPA, to comply with it when carrying out processing activities on behalf of the customer. If any processing operations were already being carried out before the entry into force of this DPA, Mailcoach Cloud will in any event as from the entry into force of the DPA carry out such processing in accordance with the DPA.

3. Data Protection Officer (DPO)

3.1 The customer [has / has not] appointed a DPO. The customer's DPO or privacy contact can be contacted via: _____.

3.2 Mailcoach Cloud has not appointed a DPO, but for all questions regarding the DPA Mailcoach Cloud can be addressed via privacy@mailcoach.app.

4. Rights and obligations of Mailcoach Cloud

4.1 Mailcoach Cloud acts exclusively on behalf of the customer.

4.2 Mailcoach Cloud processes the personal data strictly in accordance with the instructions of the customer as contained in this DPA and its annexes.

4.3 Mailcoach Cloud only processes the personal data that is strictly necessary for the execution of the DPA and only the personal data included in Annex 1.

4.4 Mailcoach Cloud will regularly inform and train staff members responsible for processing the personal data and for implementing the DPA about the provisions of privacy legislation in general and the Regulation in particular.

4.5 Mailcoach Cloud shall always observe the utmost confidentiality with respect to the personal data processed.

4.6 Mailcoach Cloud shall only process the personal data for the purposes described in Annex 1.

4.7 The customer authorizes Mailcoach Cloud to communicate the personal data to all persons, institutions and bodies who directly participate in the execution of the assignment and when this is strictly necessary for the execution of the DPA. Mailcoach Cloud will not transfer the personal data to other third parties unless required to do so by or pursuant to law or required by a court order.

4.8 Mailcoach Cloud may back up the personal data it processes as part of the performance of the DPA to ensure continuous service.

4.9 Mailcoach Cloud may make anonymised personal data available to third parties who neither directly nor indirectly participate in the performance of the DPA, as defined in Annex 1. Mailcoach Cloud guarantees that this transfer to third parties always takes place within the limits of the Regulation and exclusively concerns processing for archiving in the public interest, scientific or historical research or statistical purposes.

5. Rights and obligations of the customer

5.1 The customer shall, each time it issues a new processing activity to Mailcoach Cloud or whenever the purpose of the processing changes, propose an addendum to this DPA.

The customer acknowledges and accepts its own liability in the event that such an addendum is not signed in time by the Parties.

5.2 It is the customer's responsibility to ensure they determine the most appropriate legal basis for their processing activities.

5.3 It is the customer's responsibility to ensure they correctly and fully inform the subscribers about the data that is being processed as mentioned in annex 1.

5.4 It is the customer's responsibility to erase all personal data of employees from Mailcoach Cloud when that employee is no longer employed by the customer or will not use Mailcoach Cloud any further.

5.5 It is the customer's responsibility to erase all personal data of subscribers upon their first request.

5.6 If the customer uses integrations, add-ons, extensions, external email providers, identity providers used for social login (such as Google or GitHub), or any other third-party services in combination with the Mailcoach Cloud service — including services that process personal data outside the EEA - the customer is solely responsible and liable for such processing activities. These third parties act independently and are not considered subprocessors of Mailcoach Cloud unless expressly listed in Annex 1.

6. Rights of the data subject

6.1 If Mailcoach Cloud receives a request from a data subject whose the personal data are being processed to exercise his/her rights in accordance with the Regulation, such as

the right to object or the right to erase the personal data, Mailcoach Cloud shall inform the customer about this order as soon as possible.

6.2 Mailcoach Cloud shall, without delay and no later than within 7 working days of receiving the request, provide an appropriate response to this instruction from the customer and either provide the requested information or make the requested adjustments to the personal data, or delete and destroy certain personal data, or inform the customer of the reason why it is not possible to comply with the order within 7 working days.

6.3 The customer acknowledges and accepts that in case the person concerned requests erasure of the personal data, Mailcoach Cloud does not necessarily have to remove the personal data from all his backups in order to give an adequate response to the order of the customer.

7. Confidentiality

7.1 The Parties will treat all data and information received during the term of the DPA and for ten years thereafter as confidential and shall not disclose it to any third party nor use it for any purpose other than furthering the objectives of the DPA.

7.2 The obligation set out in the previous paragraph does not apply to confidential information which:

- Is already publicly available at the time of disclosure by the disclosing party, or becomes publicly available thereafter without the recipient's involvement;
- Is already in the legal possession of the recipient at the time of the disclosure as can be satisfactorily demonstrated by the recipient;
- Is received by the recipient on a non-confidential basis from third parties.

7.3 The personal data shall also be considered as confidential information which cannot be used by Mailcoach Cloud at any time in the future, even after ten years, except within the limits of the present DPA.

8. Liability and Warranties

8.1 Mailcoach Cloud will strictly observe the provisions of the DPA when processing the personal data and guarantees to the customer that he will take the necessary measures to ensure that his employees charged with the execution of the DPA comply with the provisions of the DPA.

8.2 Mailcoach Cloud guarantees in particular to the customer that it has made its employees and appointees aware of the provisions of the DPA and has concluded a DPA with them which offers at least the guarantees expected from Mailcoach Cloud on the basis of the DPA.

8.3 The liability of Mailcoach Cloud is always limited to those cases specifically provided for in the Regulation.

The liability of Mailcoach Cloud shall in all cases be limited to direct damage to the goods of the customer. The customer indemnifies Mailcoach Cloud at all times from all claims from third parties.

8.4 The customer acknowledges that integrations, features, or subprocessors activated by the customer that are not listed in Annex 1 fall entirely outside Mailcoach Cloud's control. Mailcoach Cloud shall not be held liable for any damages, regulatory consequences, complaints, breaches, or unlawful processing arising from such third party tools or external email providers.

Any such use is made at the customer's sole risk, and the customer fully indemnifies Mailcoach Cloud for all claims or damages arising from such processing activities.

9. Duration, notice and termination

9.1 The DPA shall enter into force on Date of signature

9.2 The DPA is concluded for as long as the customer uses the Mailcoach Cloud services. With exception of the surviving clauses.

10. Consequences of the termination

When the DPA ends, in whatever way, Mailcoach Cloud shall, if requested by the customer, return all personal data-containing documents or instruct its sub processors to do so.

If the personal data are kept or stored on a computer system of Mailcoach Cloud or recorded in any other form that cannot reasonably be made available to the other party, then Mailcoach Cloud will erase such personal data and/or instruct its sub-processor(s) to do so.

11.Retention of personal data

Mailcoach Cloud will not retain the personal data any longer than is necessary for the performance of the assignment for which it was provided. If the personal data are no longer required after this, then Mailcoach Cloud can exchange them adequately and remove them permanently, or return the data carriers to the customer. Mailcoach Cloud database backups are kept for 30 days before being deleted.

12. Control by the customer

The customer has the right to check the compliance with the DPA. To this end, it may, by appointment, visit the premises or places where Mailcoach Cloud or the sub-processors carry out the data processing and/or keep the copies or backups and inspect there all useful and necessary documents required to

ensure that the processing by Mailcoach Cloud or sub-processors is in conformity with the provisions of the present DPA and the provisions of the Regulation.

The costs of this audit shall be borne by the customer.

13. Security

13.1 Mailcoach Cloud will take the appropriate technical and organizational measures to secure the personal data and the processing thereof in accordance with Annex 1.

13.2 Mailcoach Cloud will take the necessary measures to limit access to the personal data to those members of staff employed by Mailcoach Cloud who need access to this personal data in order to execute the DPA.

13.3 If Mailcoach Cloud makes use of subcontractors for the execution of the DPA, Mailcoach Cloud guarantees that it has concluded a DPA with these subcontractors containing at least the provisions of the DPA

13.4 Where the customer enables or configures integrations, add-ons, or third party tools in combination with the Mailcoach Cloud service, the customer is solely responsible for ensuring that such third parties implement appropriate technical and organisational security measures in accordance with the Regulation.

Mailcoach Cloud does not audit, monitor, or guarantee the security posture of third-party systems connected at the customer's initiative.

14. Subprocessing

Mailcoach Cloud may appoint sub processors to carry out the processing activities under the DPA.

If Mailcoach Cloud wishes to use a sub-processor within the meaning of this article 14, Mailcoach Cloud will undertake to enter into a written DPA with this sub-processor which covers at least all guarantees, obligations and liabilities arising from this DPA.

15. Data breaches

15.1 Upon discovery of a Data Breach Mailcoach Cloud will take reasonable efforts to inform the customer within 24 hours of the discovery via email.

15.2 Mailcoach Cloud will, after the discovery of a Data Breach, keep the customer informed of the measures that have been taken to limit the scope of the Data Breach or to prevent it from occurring in the future.

16. Export of personal data

Mailcoach Cloud will not allow personal data to be processed by other persons or organizations located outside the European Economic Area, without the prior written consent of the customer.

By signing this DPA, the customer consents to all current sub processors used by Mailcoach Cloud. A list can be found in Annex 1.

17. Miscellaneous provisions

17.1 The DPA constitutes the final, entire and exclusive written expression of the intentions of the Parties to this DPA and supersedes all prior communications, statements, agreements, undertakings or representations, whether verbal or written, by or between each party.

17.2 If one or more provisions of this DPA are declared null and void or become unenforceable, this shall not affect the legality, validity and enforceability of the remaining provisions of this DPA and of the DPA as a whole, in so far as they still have any effect or reason to exist.

The Parties undertake, to the extent legally possible, to replace the invalid provisions by a new provision that corresponds to the objectives and choices of this DPA.

17.3 Neither party may transfer any rights under this DPA to third parties without the prior written consent of the other.

17.4 Amendments or changes to this DPA or its annexes can only be made if they are accepted and signed in writing by both Parties.

17.5 In case of doubt as to the interpretation of a provision of this DPA, it shall always be interpreted in accordance with the provisions of the Regulation, at least in the light of the Regulation.

18. Applicable law and disputes

18.1 This DPA is governed in all respects by and shall be interpreted and construed in accordance with Belgian law.

18.2 Disputes concerning the execution or interpretation of the DPA shall be submitted exclusively to the courts of Antwerp.

Signed for and on behalf of the Data Controller (Customer)

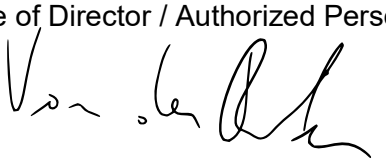
Signature of Director / Authorized Person:

_____

Company name: _____

Signed for and on behalf of the Data Processor (Spatie bv)

Signature of Director / Authorized Person:



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Company name: **Spatie bv**

Annex 1: Overview of personal data, processing types and processing purposes

Type of personal data	Processing type	Processing purpose
Customer data		
First and last name team member	Setting up a profile	Adding a team member
Email team member	Sending invitation to create profile and setting up a profile	Adding a team member
Role team member (Administrator or User)	Categorisation	Assigning rights to this team member
Password team member	Setting up profile	Protecting access to account
Team name and cloud URL	Setting up team	Creating a team to place the users in
Send to email address	Adding to list	To show as the email address from which the email is send
Reply to email address	Adding to list	To show as the email address when the subscriber wants to reply
Reply to name	Adding to list	To show as the name of the user when the subscriber wants to reply
Subscriber data		
First and last name	Adding to subscriber list	Addressing the subscriber by name
Email address	Adding to subscriber list and sending emails	Marketing, transactional, automation
Individual statistics (number of clicks, opens, send emails, bounces (hard/soft))	Creating statistics	Marketing, transactional, automation

Place of processing of the personal data:

The processing of subscriber data takes place within the European Economic Area, unless the customer has chosen an email provider located outside of the European Economic Area. The processing of customer data can take place outside of the European Economic Area. In these cases Mailcoach will implement appropriate safeguards such as the conclusions of Standard Contractual Clauses where necessary and additional security measures. See below for which sub processors are located within and outside of the European Economic Area.

Names and contact details of the subprocessors:

A clear overview of the service providers involved in operating Mailcoach and the categories of data they may process.

These links make each service provider's public data processing terms and privacy information easy to find. For US providers, EU–US Data Privacy Framework information is included where available.

Company	Processes customer data?	Processes subscriber data?
UpCloud Oy Hosting provider (Finland) https://upcloud.com/ DPA - Privacy policy	Yes	Yes
Aiven Ltd. Database provider (Finland) https://aiven.io/ DPA - Privacy policy	Yes	Yes
Facade BV Error tracking and detection within the application (Belgium) https://flareapp.io/ DPA - Privacy policy	Yes	Yes
Stripe, LLC Payment service provider (US) https://stripe.com/en-be DPA - Privacy policy - DPF statement	Yes	No
Conva Ventures Inc. Web analytics provider (Canada) https://usefathom.com/ DPA - Privacy policy	Yes	No
BunnyWay d.o.o. DDoS protection (Slovenia) https://bunny.net/ GDPR information - Privacy policy *DPA available in the customer dashboard.*	Yes	No
Slack Technologies, LLC Webhooks (US) https://slack.com DPA - Privacy policy - DPF statement	Yes	No
MaxMind, Inc. Determine currency on pricing page (US) https://dev.maxmind.com/geoip/ DPA - Privacy policy - DPF statement	Yes (IP address)	No
Laravel Holdings Inc. DevOps tooling (US) https://forge.laravel.com/ DPA - Privacy policy - DPF statement	*Doesn't strictly process data, but has access to servers.*	

Company	Processes customer data?	Processes subscriber data?
Raintank, Inc. dba Grafana Labs DevOps tooling (US) https://grafana.com/products/cloud/ DPA - Privacy policy - DPF statement	*Doesn't strictly process data, but has access to servers.*	
AC PM LLC Email provider (US) https://postmarkapp.com/ DPA - Privacy policy - DPF statement	Yes	Only when configured

Annex 2: Overview security measures

Mailcoach Cloud provides a public version of all security measures on its website. Please visit https://mailcoach.app/security for a recent version of our security guidelines. If more information is required, please contact us directly via security@mailcoach.app.