Data Processing Agreement

This DPA is entered into between Dartfish and the Customer and is incorporated into and governed by the terms of the Agreement.

1. Parties

This ”Data Processing Agreement” shall be effective as from _____ (“Effective Date”) between:

Dartfish Inc, a private company, incorporated under the laws of Switzerland, with its registered seat at Rte de la Fonderie 6, 1700 Fribourg, hereinafter to be referred to as **“Processor**”;

and

_____ incorporated and registered in _____with its registered seat at _____ , hereinafter referred to as “**Controller**”;

Controller and the Processor are hereinafter jointly referred to as the “**Parties**” and individually as the “**Party**”.

It is hereby agreed as follows:

2. Definitions

“Agreement”	means the commercial agreement between Dartfish and the Customer for the provision of the Services. The Dartfish Terms of Use are part of this Agreement
“Personal Data”	means any information relating to an identified or identifiable natural person (‘data subject’)
“Data Subject”	means an identifiable natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
“Subsidiary”	means any entity that directly or indirectly controls, is controlled by, or is under common control of a party. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of a party;
“Sub-Processor”	means any person or entity engaged by us (including a Subsidiary) to process Personal Data in the provision of the Services to the Customer.

3. Purpose

The Processor has agreed to provide the Services to the Controller in accordance with the Agreement. In providing the Services, the Processor shall process Customer Data on behalf of the Controller. Customer Data may include Personal Data. The Processor will process and protect such Personal Data in accordance with the terms of this DPA.

4. Scope

In providing the Services to the Controller pursuant to the terms of Agreement, the Processor shall process Personal Data only to the extent necessary to provide the Services in accordance with both the terms of the Agreement and the Controller's instructions documented in the Agreement and this DPA.

5. Processor Obligations

The Processor may collect, process or use Personal Data only within the scope of this DPA.

The Processor confirms that it shall process Personal Data on behalf of the Controller and shall take steps to ensure that any natural person acting under the authority of the Processor who has access to Personal Data does not process the Personal Data except on instructions from the Controller

The Processor shall promptly inform the Controller, if in the Processor's opinion, any of the instructions regarding the processing of Personal Data provided by the Controller, breach any applicable data protection laws.

The Processor shall ensure that all employees, agents, officers and contractors involved in the handling of Personal Data:

(i) are aware of the confidential nature of the Personal Data and are contractually bound to keep the Personal Data confidential;
(ii) have received appropriate training on their responsibilities as a data processor; and
(iii) are bound by the terms of this DPA.

The Processor shall implement appropriate technical and organizational procedures to protect Personal Data, 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 natural persons.

The Processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, which can include:

(i) the ability to ensure the on-going confidentiality, integrity, availability and resilience of processing systems and services;
(ii) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
(iii) the necessary technical and organizational measures for ensuring the security of the processing. In accessing the appropriate level of security, account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

The technical and organizational measures detailed in the Security Documentation shall be at all times adhered to as a minimum security standard. The Controller accepts and agrees that the technical and organizational measures are subject to development and review and that the Processor may use alternative suitable measures to those detailed in the attachments to this DPA provided that such updates and modifications do not result in the degradation of the overall security of the Services.

Where Personal Data relating to an EU Data Subject is transferred outside of the EEA it shall be processed only by entities which:

(i) are located in a third country or territory recognized by the EU Commission to have an adequate level of protection; or
(ii) have entered into Standard Contractual Clauses with the Processor; or
(iii) have other legally recognized appropriate safeguards in place, such as the EU-US Privacy Shield or Binding Corporate Rules.

Taking into account the nature of the processing and the information available to the Processor, the Processor shall assist the Controller by having in place appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the Data Subject's rights and the Controller's compliance with the Controller's data protection obligations in respect of the processing of Personal Data.

6. Controller Obligations

The Controller represents and warrants that it shall comply with the terms of the Agreement, this DPA and all applicable data protection laws.

The Controller represents and warrants that it has obtained any and all necessary permissions and authorizations necessary to permit the Processor, its Subsidiaries and Sub-Processors, to execute their rights or perform their obligations under this DPA.

The Controller is responsible for compliance with all applicable data protection legislation, including requirements with regards to the transfer of Personal Data under this DPA and the Agreement.

The Controller may require correction, deletion, blocking and/or making available the Personal Data during or after termination of the Agreement. The Processor will process the request to the extent it is lawful and will reasonably fulfil such request in accordance with its standard operational procedures to the extent possible.

The Controller acknowledges and agrees that some instructions from the Controller, including destruction or return of data from the Processor, may result in additional fees. In such case, the Processor will notify the Controller of such fees in advance unless otherwise agreed.

7. Sub-Processors

The Controller acknowledges and agrees that:

(i) Subsidiaries of the Processor may be used as Sub-processors; and
(ii) the Processor and its Subsidiaries respectively may engage Sub-processors in connection with the provision of the Services.

All Sub-processors who process Personal Data in the provision of the Services to the Controller shall comply with the obligations of the Processor similar to those set out in this DPA.

Where Sub-processors are located outside of the EEA, the Processor confirms that such Sub-processors:

(i) are located in a third country or territory recognized by the EU Commission to have an adequate level of protection; or
(ii) have entered into Standard Contractual Clauses with the Processor; or
(iii) have other legally recognized appropriate safeguards in place, such as the EU-US Privacy Shield or Binding Corporate Rules.

The Processor shall make available upon request to the Controller the current list of Sub-processors which shall include the identities of Sub-processors and their country of location. During the term of

this DPA, the Processor shall provide the Controller with at least 30 days prior notification, via email (or in-application notice), of any changes to the list of Sub-processor(s) who may process Personal Data before authorizing any new or replacement Sub-processor(s) to process Personal Data in connection with the provision of the Services.

If the Controller objects to a new or replacement Sub-processor the Controller may terminate the Agreement with respect to those Services which cannot be provided by the Processor without the use of the new or replacement Sub-processor. The Processor will refund the Controller any prepaid fees covering the remainder of the Term of the Agreement following the effective date of termination with respect to such terminated Services.

8. Liability

The limitations on liability set out in the Agreement apply to all claims made pursuant to any breach of the terms of this DPA.

The parties agree that the Processor shall be liable for any breaches of this DPA caused by the acts and omissions or negligence of its Sub-processors to the same extent the Processor would be liable if performing the services of each Sub-processor directly under the terms of the DPA, subject to any limitations on liability set out in the terms of the Agreement.

The parties agree that the Controller shall be liable for any breaches of this DPA caused by the acts and omissions or negligence of its Subsidiaries as if such acts, omissions or negligence had been committed by the Controller itself.

The Controller shall not be entitled to recover more than once in respect of the same claim.

9. Data Deletion

The Controller will enable the Processor to delete Personal Data using the functionality provided by the Service. On termination, the Controller has the option to request the return or deletion of Personal Data. This request must be made within 14 days of termination. The Processor will make the data available for download by the Controller in a machine readable format. Thereafter the Processor will permanently delete the Personal Data from the live systems in any event.

Following permanent deletion from the live systems, partial data resides on the Processor's archival systems for a period of up to 35 days. If requested by the Controller, the Processor may be able to assist with recovery of partial data from these archives during this period. A fee will be charged for this service.

10. Notification of Data Breach

The Processor shall notify the Controller without undue delay after becoming aware of (and in any event within 72 hours of discovering) any accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access to any Personal Data ("Data Breach").

The Processor will take all commercially reasonable measures to secure the Personal Data, to limit the effects of any Data Breach and to assist the Controller in meeting the Controller's obligations under applicable law.

The Processor's notification of, or response to, a Data Breach under this Section 10 will not be considered as an acknowledgement by the Processor of any fault or liability with respect to the Data Breach.

11. Compliance, Cooperation and Response

In the event that the Processor receives a request from a Data Subject in relation to Personal Data, the Processor will refer the Data Subject to the Controller unless otherwise prohibited by law. The Controller shall reimburse the Processor for all costs incurred resulting from providing reasonable assistance in dealing with a Data Subject request or assisting the Controller in complying with its duties. In the event that the Processor is legally required to respond to the Data Subject, the Controller will fully cooperate with the Processor as applicable.

The Processor will notify the Controller promptly of any request or complaint regarding the processing of Personal Data, which adversely impacts the Controller, unless such notification is not permitted under applicable law or a relevant court order.

The Processor may make copies of and/or retain Personal Data in order to comply with its legal or regulatory requirement including, but not limited to, retention requirements.

The Controller and the Processor and, where applicable, their representatives, shall cooperate, on request, with a supervisory data protection authority in the performance of their respective obligations under this DPA.

The parties agree that the Processor will be entitled to charge the Controller additional fees to reimburse the Processor for its staff time, costs and expenses in assisting the Controller, when the Controller requests the Processor to provide assistance pursuant to this DPA. In such cases, the Processor will notify the Controller of its fees for providing assistance, in advance.

12. Term and Termination

The term of this DPA shall coincide with the commencement of the Agreement and this DPA shall terminate automatically together with termination or expiry of the Agreement.

13. General

This DPA sets out the entire understanding of the parties with regards to the subject matter herein.

This DPA shall be governed by the laws of Fribourg, Switzerland. The courts of Fribourg, Switzerland shall have exclusive jurisdiction for the settlement of all disputes arising under this DPA.

14. Signature

IN WITNESS WHEREOF, the Parties have caused this Data Processing Agreement to be executed by their duly authorized representatives.

Processor	**Controller**
Dartfish Inc,	_____
_____/_____/_____ *Date*	_____/_____/_____ *Date*
_____ *Name*	_____ *Name*
_____ *Signature*	_____ *Signature*