Data Processing Agreement (DPA)

This agreement is made on: ../../....

BETWEEN

Facade BV, with registered office at 2018 Antwerp (Belgium), Kruikstraat 22/12, and with company number 0729.961.919, represented by Jef Van der Voort in his capacity of permanent representative of Spatie bv, director, (hereinafter referred to as "Facade").

AND

The Client,
(hereinafter referred to as the "**the Client**")

The Parties shall hereinafter jointly be referred to as the "**Parties**" and individually as a "**Party**".

THE FOLLOWING IS EXPLAINED:

1. The Parties signed an agreement concerning the use of the software "Flare", developed by Facade, which serves as an error tracker for websites and web applications (hereinafter the "**Main Contract**"). The Client wishes to use Flare for the website and web applications set out in the Main Contract (hereinafter the "**Website and Web Applications**").

2. This Data Processing Agreement (hereinafter the "**DPA**") forms part of and is subordinate to the Main Contract between Facade and the Client.

3. The Parties conclude this DPA in order to specify their respective contractual rights and obligations in connection with the processing of personal data and thereby to ensure the protection and security of the data to be processed.

4. Facade and the Client agree that, under the terms of the DPA, the Client is the controller of his personal data and their processing, and that Facade is a processor on behalf of the Client.

5. This DPA has been drawn up in compliance with the GDPR. The provisions of this DPA must be read and interpreted as set out in the GDPR and the applicable data protection legislation, and also extend to all personal data held by Facade in the light of such processing, insofar as it holds such data on or after the date on which this DPA comes into effect.

AND THE FOLLOWING IS AGREED:

Article 1 - Definitions

- **Personal data**: any information relating to an identified or identifiable natural person; an identifiable natural person is one 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;

- **Data subject:** the natural person whose data are being processed;

- **Processing:** an operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automatic means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

- **Controller:** the person or legal entity who, in implementation of this DPA, alone or jointly with others, determines the purposes and means of the processing of personal data;

- **Processor:** the person who, in execution of this DPA, processes personal data on behalf of and for the account of the controller;

- **Subprocessor:** the person who undertakes (part of) the processing of personal data on behalf of Facade and who is bound to that processor by a written agreement, provided that there is no objection from the person responsible for processing;

- **Applicable data protection law:** This is the General Data Protection Regulation (Regulation of the Parliament and of the Council No. 2016/679, 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC, OJ L. 4 May 2016, p. 119) (hereinafter referred to as "**GDPR**") and the Belgian Act of 30 July 2018 on the protection of natural persons with regard to the processing of personal data ("*Wet van 30 juli 2018 betreffende de bescherming van natuurlijke personen met betrekking tot de verwerking van persoonsgegevens*");

- **Personal data breach** (hereinafter "**Data breach**") means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, data transmitted, stored or otherwise processed;

- **Technical and organisational protection measures**: all measures taken by Facade with a view to protecting personal data against unlawful destruction or accidental loss, alteration or unauthorised disclosure or access - in particular where processing involves the transmission of data over a network - as well as against any unlawful means of processing;

- **Instruction**: the written instruction, originating from the person responsible for processing, in which Facade is instructed to perform (a) specific action(s) with regard to the personal details handed over to it, which may include depersonalising, blocking, deleting or making these details accessible;

- **Main Contract**: the agreement concluded between the Parties concerning the use of the software "Flare".

- **Competent supervisory authority**: an independent public body established by a Member State pursuant to Article 51 of the GDPR and authorised to enforce the GDPR under Article 55 of the GDPR.

Article 2 - Object

2.1. Subject matter and purpose of the processing, type of data and categories of data subjects whose data are processed

1. Personal data shall be processed in accordance with the Main Contract and this DPA. The purposes and essential means of processing shall be determined solely by the Client.

2. Facade will carry out the following processing in particular when implementing the Main Contract:

   ○ Storage and other processing necessary to provide, maintain and improve the services described in the Main Contract;

   ○ Communication of the personal data in accordance with the underlying DPA and/or in accordance with the applicable regulations;

   ○ Providing technical support within the scope of the Main Contract at the request of the Client;

3. During the term of the Main Contract, the Client may independently decide which personal data it will process in performance of the Main Contract. These personal data relate in particular (but not exclusively) to the following categories of data subjects:

   ○ The users of the web application or the website of the Client to which the Flare software relates;

   ○ The employees or other workers of the Client;

   ○ The Client's business partners or business customers;

   ○ Other stakeholders with whom the Client wishes to share the personal data;

4. Facade will process the following categories of data under the instructions of the Client in the execution of the Main Contract:

- ○ **User data**: identification data such as name, first name, e-mail address and IP address and cookies that track users of the Web application or Website;

- ○ **Team data**: the name, first name, e-mail address and photograph of persons to whom the Client wishes to grant access in the context of a project;

- ○ **Project data**: personal data linked to a specific project of the Client;

5. However, the provision of this article may be deviated from with an explicit, written instruction from the Client.

2.2 Nature and duration of processing

1. The processing of personal data is limited to what is necessary to perform the Main Contract. The extent to which personal data is shared with other persons in the context of the Main Contract is entirely determined by the Client. In any case, the data may be subject to the following basic processing activities:

   - ○ Storage of personal data in databases;

   - ○ Taking a backup of the personal data;

   - ○ Computer processing of personal data, including transmission, retrieval and access;

   - ○ Network access to enable a transfer of the personal data, if necessary;

   - ○ [...]

2. Facade undertakes to keep no more personal data than is necessary for the execution of the Main Contract.

   User data, team data and project data will be retained by Facade for a further six months after the termination of the Main Contract, in order to respond to any queries from the Client. After this period, these data will be completely and appropriately deleted.

   Personal data manually entered in Flare by the (employees of the) Client in the event of an error (source code, request data, personal data, technical context, etc.) are retained for a maximum of 40 days after processing, after which they are appropriately deleted.

   The Client may decide on its own initiative to share certain data publicly. Such shared data is outside the scope of the DPA and remains the sole responsibility of the Client or its employees.

Article 3 - Commitments on the part of Facade

1. Processing shall only take place on the basis of the necessary written instructions from the Client. However, should Facade believe that the Client's instructions contravene a provision or provisions of the applicable data protection regulations, it shall inform the Client of this without delay.

2. Taking into account the nature of the processing and the information available to it, Facade will assist the Client in enforcing the obligations under Articles 32 to 36 of the GDPR, in particular:

   i. Compliance with the obligations concerning the security of processing;

   ii. The notification of a data breach to the supervisory authority;

   iii. The communication of a data breach to the data subject;

   iv. Conducting data protection impact assessments;

   v. Conducting preliminary consultations.

3. In principle, Facade only processes personal data in application of the Main Contract within the European Economic Area. With regard to the transfer of personal data to a third country or an international organisation, Facade shall only process personal data on the basis of written instructions from the Client, unless a provision of Union or national law applicable to Facade obliges it to do so; in such cases, Facade shall inform the Client of this legal provision prior to processing, unless this legislation prohibits such notification for important reasons of general interest.

   By signing this DPA, the Client agrees in general and in writing to the current subprocessors located outside the EEA of Facade described in Appendix 2 of this DPA and the possible transfers of personal data to third countries. Facade will inform the Client if a new subprocessor is appointed or if an existing subprocessor is replaced. The Client may object to such an appointment within a period of two weeks.

4. Facade guarantees that the persons authorised to process personal data have undertaken or will undertake to respect confidentiality or are bound by an appropriate legal obligation of confidentiality. More specifically, reference is made to Article 6.

5. Facade keeps a record of processing activities for the various categories of processing activities carried out on behalf of the Client (hereinafter the "**Record of Processing Activities**").

   If requested, Facade will send the most recent version of the Record of Processing Activities to the competent supervisory authority, together with all the necessary information requested by such an authority as part of its investigations.

6. Facade undertakes to inform the Client without delay if it receives one of the following requests from a person concerned:

    i. A request for access to the personal data processed about the data subject;

    ii. A request for rectification of inaccurate personal data;

    iii. A request for erasure of personal data;

    iv. A request for restriction of the processing of personal data;

    v. A request to obtain a machine-readable copy of the personal data, or to transfer a copy to a third party;

    vi. An objection to any processing of personal data; or

    vii. Any other request, complaint or communication relating to the Client's obligations under the GDPR.

7. Facade shall at all times, if requested, cooperate with the competent supervisory authority and assist it in the performance of its duties. This shall in any case include the transmission to the competent supervisory authority, at its request, of a copy of the present DPAand the provision to it by Facade of all documentation necessary for assessing the extent to which processing is carried out in accordance with the provisions of the present DPA and those of the applicable data protection law.

8. Facade does not process special categories of personal data as defined in the GDPR that reveal racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, or concern genetic data or biometric data with a view to the unique identification of a person, or data concerning health, data concerning a person's sexual behaviour or sexual orientation, or data concerning criminal convictions and offences.

    If this is nevertheless the case, and on the instructions of the Client, Facade guarantees adequate technical and organisational measures for the processing of this personal data as stipulated in Annex 1.

Article 4 - Data protection and confidentiality

1. Facade shall make the necessary efforts to ensure that the data processed by it is secured and thus protected against unauthorised or unlawful processing, or against the loss, destruction, falsification, damage, unauthorised disclosure or access of such personal data, whether unlawful or accidental. To this end, it shall implement the necessary technical and organisational protection measures having regard inter alia to the nature of the personal data processed, the purpose of the processing and the damage that could result from unauthorised or unlawful processing, loss, destruction, alteration, unauthorised disclosure or access to the personal data processed.

2. An overview of these security measures is set out in Appendix 1 to the DPA. At least once a year, Facade shall assess the technical and organisational measures thus put in place. The analysis of the assessment will be made available to the Client on request.

Article 5 - Data breaches

1. As soon as Facade has a suspicion that a Data Breach has occurred, Facade shall inform the Client without delay. Facade shall also provide the Client with all possible relevant information concerning the Data Breach, including, amongst other things, information about the nature and causes of the Data Breach, about the persons who have worked with the leaked data in question and information about the measures to be taken to remedy the Data Breach or to limit the consequences thereof.

2. Facade will assist the client in fulfilling his obligation (if any) to notify the competent supervisory authority, as well as the natural persons concerned whose data is the subject of the processing.

3. The foregoing points do not affect the responsibility and liability of the client in the context of a Data Breach.

Article 6 - Processing of personal data by a subprocessor

1. In the context of implementing this DPA, Facade has the option of calling upon the services of a subprocessor. To this end, it shall enter into a written agreement with the person in question, setting out in detail the conditions under which the (partial) processing is to be carried out. The conditions detailed in this written (partial) processing agreement must impose at least the same obligations on the other processor as those to which Facade is subject under the present DPA.

2. By signing this DPA, the Client agrees in general and in writing to the current subprocessors of Facade described in Appendix 2 of this DPA. Facade will inform the Client if a new subprocessor is appointed or if an existing subprocessor is replaced. The Client may object to such an appointment within a period of two weeks.

Article 7 - Liability

1. The Client guarantees that the data to be processed by Facade on his behalf have been obtained in accordance with the provisions of the applicable data protection legislation. The Client also ensures that her instructions to Facade enable the latter to carry out the processing in accordance with the applicable legislation. However, if the processing for which the Client is responsible infringes the applicable data protection law, the Client shall, without prejudice to the other paragraphs of this Article, compensate all material and immaterial damage suffered by the persons concerned.

2. Facade guarantees that the processing of personal data in execution of this DPA takes place in accordance with the written instructions of the Client. Facade shall only be liable to the Client for any direct damage to the Client resulting from a breach of the obligations under this DPA up to the amount corresponding to one year's turnover for Facade based on the underlying Main Contract.

Article 8 - Audits

1. Facade shall make available to the Client all information necessary to demonstrate compliance with the obligations set out in this DPA. It shall also facilitate and contribute to audits, including inspections, by the Client or an auditor authorised by the Client.

2. These audits are limited at the latest to what is necessary to check the fulfilment of Facade's obligations under the applicable data protection law, and under no circumstances does this entitle the Client to take cognisance of information from other Facade clients. The costs of the audit shall be borne entirely by the Client.

Article 9 - Duration and termination of the DPA

1. The DPA shall end as soon as the duration of the Main Contract has expired, or the processing assignments to which Facade had committed itself have been fully carried out in accordance with the provisions of this DPA. The Parties also have the option of terminating the DPA by mutual agreement.

2. Even after the termination of this DPA, the Parties, as well as all persons involved in the processing of the personal data, shall remain bound to confidentiality with regard to the personal data concerned, as well as the processing that took place in execution of this DPA. This post-contractual obligation of confidentiality shall extend for a period of one year from the day after the last date of validity of this DPA.

3. Facade deletes any personal data that are also error data by default 40 days after the error was found. Otherwise, personal data will be deleted in accordance with Facade's retention policy in line with the GDPR:

i.   Once the DPA has been terminated or Facade no longer needs the personal data following the fulfilment of its order, it shall by default delete the original personal data in question contained in the teams of the Flare application that don't have a subscription or any outstanding invoices, as well as any duplicates of said personal data, if no subscription is started within 3 months from the start of the trial.

ii. The personal data of inactive users that have not created any teams, as well as any duplicates of said personal data, are deleted when they do not log in to the Flare application for a period of 6 consecutive months.

iii. The Client may also request in writing that the personal data, as well as any duplicates of said personal data, are returned for a period up to 3 months following the termination of the Main Contract.

iv. Facade will need to keep the personal data if Union or national law requires the storage of the personal data.

Article 10 - General provisions

1. The nullity or unenforceability of one or more provisions of this DPA will never result in the nullity or unenforceability of the entire DPA. If necessary, the Parties will, in good faith and by mutual agreement, replace the void or unenforceable provisions by valid and enforceable provisions which most closely correspond to the intention of the Parties and the scope and/or purpose of the invalid or unenforceable provisions.

2. This DPA replaces any pre-existing agreement between the Parties with the same object.

3. Any deviation from this DPA will be included in one or more subsequent annexes to this DPA. The attachment(s) signed by both Parties will then form an integral part of the DPA between the Parties. In the event of conflict between the conditions included in successive appendices, the most recent appendix will take precedence.

Article 11 - Applicable law and competent courts

1. This DPA is governed exclusively by Belgian law.

2. Insofar as this is not provided for in the Main Contract, the courts of the district of Antwerp shall have exclusive jurisdiction over any dispute between the Parties concerning the execution of this DPA.

Drawn up in Antwerp in two original copies, each party acknowledging receipt of a signed original copy.

For the Client in its capacity of Controller,

For Facade in its capacity of Processor,

Signature of director/permanent representative:

Signature of director/permanent representative:

Annex 2 - Overview of implemented technical and organisational security measures

Facade provides a public version of all security measures through the website of its director, Spatie bv. Please visit https://spatie.be/guidelines/security for a recent version of our security guidelines. If more information is required, please contact us directly via support@flareapp.io.

Annex 2 - List of subprocessors

Subprocessor	Objective
Spatie	Management of the Flare application. Belgium.
Amazon Simple Email Service	Mail traffic. US Based.
Bugsnag	Monitoring of security incidents. US Based.
HelpSpace	To support chat features in the Flare application. Germany.
DigitalOcean	Hosting servers on which Flare data is stored. US Based.
Oh Dear	Monitoring of the up- and downtime of the Flare application. Belgium.
Stripe	Payment provider. US Based.
Fathom Analytics	To ensure the operation of the Flare application (to distinguish users from each other). US Based.
Slack	Internal communication and monitoring of safety incidents. US Based.
Cloudflare	Improving the application speed and performance. US Based.
Spatie	Management of the Flare application. Belgium.
Amazon Simple Email Service	Mail traffic. US Based.