Data Processing Agreement (DPA)

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This DPA constitutes Wonderwerk's (the "Processor") and Customer's (the "Controller") obligations regarding data processing and is a part of the Agreement. Capitalized terms used but not defined in this DPA will have the meaning assigned to them in the GTC or the Order.

Appendices to the Processor Agreement

1. Background and Purpose

1.1 The Parties have agreed to the provision of certain services from the Processor to the Controller, as described in more detail in the Parties' separate agreement to this effect and appendix 1 to this agreement (the "Primary Services").

1.2 In this connection, the Processor processes personal data on behalf of the Controller, and for that purpose, the Parties have entered into this agreement and underlying appendices (the "Processor Agreement")

1.3 The purpose of the Processor Agreement is to ensure that the Processor complies with the personal data regulations in force from time to time, including in particular the General Data Protection Regulation (GDPR) including Art. 13/14 of Regulation (EU) 2016/679.

2. Scope

2.1 The Processor is authorised to process personal data on behalf of the Controller on the terms and conditions set out in the Processor Agreement.

2.2 The Processor may only process personal data subject to documented instructions from the Controller ("Instructions"). This Processor Agreement, including appendices, constitutes the Instructions at the date of signature.

2.3 Unless otherwise specified in the Processor Agreement, the Processor may use all relevant technical aids, including IT systems.

2.4 Regardless of the termination of the Processor Agreement, clause 14 of the agreement regarding confidentiality as well as clauses 12, 14, 15.4 and 16 will remain in force after termination of the Processor Agreement.

3. Duration

3.1 The Processor Agreement applies until either (a) termination of the agreement(s) on provision of the Primary Services or (b) termination of the Processor Agreement.

4. Processor's obligations

4.1 Technical and organisational security measures

4.1.1 The Processor is responsible for implementing necessary (a) technical and (b) organisational measures to ensure an appropriate security level. The measures must be implemented with due regard to the current state of the art, costs of implementation and the nature, scope, context and purposes of the processing and the risk of varying likelihood and severity to the rights and freedoms of natural persons. The Processor shall take the

category of personal data described in appendix 1 into consideration in the determination of such measures.

4.1.2 The Processor shall implement the suitable technical and organisational measures in such a manner that the processing by the Processor of personal data meets the requirements of the personal data regulation in force from time to time.

4.2 Employee conditions

4.2.1 The Processor shall ensure that employees who process personal data for the Processor have undertaken to observe confidentiality or are subject to an appropriate statutory duty of confidentiality.

4.2.2 The Processor shall ensure that access to the personal data is limited to those employees for whom it is necessary to process personal data in order to meet their obligations to the Controller.

4.2.3 The Processor shall ensure that employees processing personal data for the Processor only process such data in accordance with the Instructions.

4.3 Documentation for compliance with obligations

4.3.1 Upon written request, the Processor shall document to the Controller that the Processor:

a) meets its obligations under this Processor Agreement and the Instructions.

b) meets the provisions of the personal data regulation in force from time to time, in respect of the personal data processed on behalf of the Controller.

4.3.2 The Processor's documentation must be provided within reasonable time.

4.3.3 The specific content of the obligations under clause 4.3.1 is described in appendix 3 to this Processor Agreement.

4.4 Records of processing activities

4.4.1 The Processor shall maintain a record of the processing of personal data, provided that the following conditions are met:

a) The Processor has more than 250 employees;

b) The processing of personal data by the Processor is likely to result in a risk to the rights and freedoms of data subjects;

c) The processing is not occasional

d) The processing includes special categories of personal data; or

e) The processing relates to criminal convictions and offences.

4.4.2 The record must include the following information:

a) Categories of processing carried out on behalf of the Controller.

b) Processors' employees who process the personal data.

c) If relevant, Sub-Processors (as defined in clause 6) and their employees who process the personal data.

d) A general description of technical and organisational measures in connection with the processing.

e) If relevant, specification of third countries or international organisations to which the personal data are transferred as well as documentation for appropriate safeguards.

f) Contact details of the Processor's and Sub-Processor's contact person or data processing adviser (if appointed).

4.4.3 Upon request, the Processor shall make the records available to the Controller or any relevant supervisory authority within reasonable time.

4.5 Security breach

4.5.1 The Processor shall notify the Controller of any personal data breach which may potentially lead to accidental or unlawful destruction, alteration, unauthorised disclosure of, or access to, personal data processed for the Controller ("Security Breach").

4.5.2 Security Breaches must be reported to the Controller without undue delay.

4.5.3 The Processor shall maintain a record of all Security Breaches. The record must as a minimum document the following:

a) the actual circumstances of the Security Breach;

b) the effects of the Security Breach; and

c) the remedial measures taken.

4.5.4 Upon written request, the record must be made available to the Controller or the supervisory authorities.

4.6 Assistance

4.6.1 The Processor shall to the necessary and reasonable extent assist the Controller in the performance of its obligations in the processing of the personal data covered by this Processor Agreement, including in connection with:

a) responses to data subjects on exercise of their rights;

b) Security Breaches;

c) impact assessments; and

d) prior consultation of the supervisory authorities.

4.6.3 Finally, the Processor shall assist with the tasks specified in appendix 3.

4.6.4 The Processor is entitled to payment for time spent and materials consumed for assistance pursuant to this clause 4.6, unless otherwise specified in appendix 3.

5. Controller's obligations

5.1 The obligations of the Controller are set out in appendix 5.

6. Sub-Processors

6.1 The Processor may only use a third party for the processing of personal data for the Controller ("Sub-Processor") provided that it is specified in:

a) appendix 6 to this Processor Agreement; or

b) Instructions from the Controller.

6.2 The Processor and the Sub-Processor shall conclude a written agreement imposing the same data protection obligations on the Sub-Processor as those of the Processor (including in pursuance of this Processor Agreement).

6.3 Upon written request, the Controller must receive all agreements concluded with any Sub-Processors.

6.4 Moreover, the Sub-Processor also acts only under the Instructions of the Controller. All communication with the Sub-Processor is handled by the Processor, unless otherwise specifically agreed. Any changed or concretised Instructions from the Controller must immediately be passed on by the Processor to the Sub-Processor.

6.5 If a Sub-Processor does not comply with the Instructions, the Controller may prohibit the use of the relevant Sub-Processor.

6.6 The Processor is directly responsible for the Sub-Processor's processing of personal data in the same manner as had the processing been carried out by the Processor.

7. Transfer to third countries and international organisations

7.1 The Processor may only transfer personal data to third countries or international organisations to the extent specified in:

a) appendix 6 to this Processor Agreement; or

b) Instructions from the Controller.

7.1 In any case, personal data may only be transferred to the extent permitted under the personal data regulation in force from time to time.

7.2 If personal data are transferred to a third country, the Controller shall assist the Processor free of charge in connection with the conclusion of necessary agreements, or the Controller shall authorise the Processor to conclude the required agreements on behalf of the Controller.

8. Data processing outside the scope of the Instructions

8.1 The Processor may process personal data outside the scope of the Instructions in cases where required by EU law or national law to which the Processor is subject.

8.2 If personal data are processed outside the scope of the Instructions, the Processor shall notify the Controller of the reason. The notification must be made before processing is carried out and must include a reference to the legal requirements forming the basis of the processing.

8.3 Notification should not be made if such notification would be contrary to EU law or national law.

9. Fees and Costs

9.1 The Parties are only entitled to payment for the performance of this Processor Agreement if specifically specified herein or in the agreement(s) on delivery of the Primary Services.

9.2 Regardless of the above requirements, a Party is not entitled to payment for assistance or implementation of changes to the extent that such assistance or change is a direct consequence of the Parties' breach of this Processor Agreement.

10. Change of Instructions

10.1 Before any changes are made to the Instructions, the Parties shall to the widest possible extent discuss and, if possible agree on, the implementation of the changes, including time and costs of implementation.

10.2 Unless otherwise agreed, the following applies:

· The Processor shall, without undue delay, execute implementation of changes to the Instructions and ensure that such changes are implemented without undue delay in relation to the nature and scope of the change.

· The Processor is entitled to payment of all costs directly related to changes to the Instructions, including costs of implementation and increased costs for the delivery of the Primary Services.

· An indicative estimate of the time and cost of implementation must be communicated to the Controller without undue delay.

· The changes to the Instructions are only considered to apply once the changes have been implemented, provided that the implementation is carried out in accordance with this clause 10.2 and unless the Controller explicitly communicates a deviation from this clause.

· Processors are exempt from liability for failure to deliver the Primary Services if (including in terms of time) delivery of the Primary Services would be contrary to the changed Instructions or delivery in accordance with the changed Instructions is not possible. This may be the case (i) where the changes cannot be technically, practically or legally implemented, (ii) where the Controller explicitly communicates that the changes have to apply before implementation is possible or (iii) during the period until the parties have made any necessary changes to the agreement(s) in accordance with the change procedures herein.

11. Breach

11.1 The regulation of breach in the agreement(s) on delivery of the Primary Services also applies to this Processor Agreement as were this Processor Agreement an integral part thereof. If this is not considered in the agreement(s) on delivery of the Primary Services, the general remedies for breach laid down in applicable law will apply to this Processor Agreement.

12. Liability and limitation of liability

12.1 The regulation of liability and limitation of liability in the agreement(s) on delivery of the Primary Services also applies to this Processor Agreement as were this Processor Agreement an integral part thereof. If this is not considered in the agreement(s) on delivery of the Primary Services, the provisions in this clause 12 will apply to this Processor Agreement.

12.2 The Parties are liable according to the general rules of applicable law, subject, however, to the limitations set out in this section.

12.3 The Parties disclaim any liability for indirect losses and consequential losses, including loss of profits, loss of goodwill, loss of savings and revenue, including expenses to recover lost revenue, interest loss and loss of data.

12.4 The Parties' liability for all cumulative claims under this Processor Agreement is limited to the total amounts due for the Primary Services for the 12-month period immediately preceding the wrongful act. If the Processor Agreement has not been in force for 12 months, the amount is calculated as the agreed payment for the Primary Services for the period during which the Processor Agreement has been in force divided by the number of months for which the Processor Agreement has been in force and then multiplied by 12.

12.5 The following are not covered by the limitation of liability in this clause 12:

a) Loss as a result of the other Party's grossly negligent or intentional acts.

b) Expenses and resource consumption in connection with the performance of a Party's obligations in relation to a supervisory authority or the data subject, including compensation to a data subject, to the extent that these are caused by a breach by the other Party.

13. Force Majeure

13.1 The regulation of force majeure in the agreement(s) on delivery of the Primary Services also applies to this Processor Agreement as were this Processor Agreement an integral part thereof. If this is not considered in the agreement(s) on delivery of the Primary Services, the provisions in this clause 13 will apply to this Processor Agreement.

13.2 The Processor cannot be held liable for situations normally referred to as force majeure, including, but not limited to, war, riots, terrorism, insurrection, strike, fire, natural disasters, currency restrictions, import or export restrictions, interruption of traffic, interruption or failure of energy supply, public data systems and communication systems, long-term illness of key staff, virus and occurrence of force majeure at subcontractors.

13.3 Force majeure may only be asserted for the number of working days for which the force majeure situation lasts.

14. Confidentiality

14.1 The regulation of confidentiality in the agreement(s) on delivery of the Primary Services also applies to this Processor Agreement as were this Processor Agreement an integral part thereof. If this is not considered in the agreement(s) on delivery of the Primary Services, the provisions in this clause 14 will apply to this Processor Agreement.

14.2 Information regarding the content of this Processor Agreement, the underlying Primary Services or the other Party's business which is either, in connection with the disclosure to the receiving Party, designated as confidential information, or which, by its nature or otherwise, should be considered as confidential, must be treated as confidential and subject to at least the same degree of care and discretion as the Party's own confidential information. Data, including personal data, are always confidential information.

14.3 However, the duty of confidentiality does not apply to information which is or becomes publicly available without this being the result of a breach of a Party's duty of confidentiality, or information which is already in the possession of the receiving Party without any similar

duty of confidentiality or information which is developed independently by the receiving Party.

15. Termination

15.1 Termination for cause or breach

15.1.1 The Processor Agreement may only be terminated according to the provisions on termination in the agreement(s) on delivery of the Primary Services.

15.1.2 Termination of this Processor Agreement is subject to – and allows for – simultaneous termination of the parts of the agreement(s) on delivery of the Primary Services that concern personal data processing pursuant to the Processor Agreement.

15.2 Effects of termination

15.3 The Processor's authority to process personal data on behalf of the Controller lapses on termination of the Processor Agreement for whatever reason.

15.4 The Processor may continue to process personal data for up to three months after the termination of the Processor Agreement to the extent that this is necessary to take the required statutory measures. During the same period, the Processor is entitled to let the personal data be included in the Processor's usual backup procedure. The processing by the Processor during this period is assumed to comply with the Instructions.

15.5 The Processor and any Sub-Processors shall return all personal data processed by the Processor under this Processor Agreement to the Controller on termination of the Processor Agreement, provided that the Controller is not already in possession of the personal data. The Processor is then obliged to delete all personal data from the Controller. The Controller may request adequate information for such deletion.

15.6 The Processor may strip all personal data from Wonderwerk's application data that the controller into anonymous meta data for research and product development purposes.

16. Dispute resolution

16.1 The regulation of dispute resolution, including governing law and venue, in the agreement(s) on delivery of the Primary Services also applies to this Processor Agreement

as were this Processor Agreement an integral part thereof. If this is not considered in the agreement(s) on delivery of the Primary Services, the provisions in this clause 16 will apply to this Processor Agreement.

16.2 The Processor Agreement is subject to German law with the exception of (a) rules leading to the use of law other than German law and (b) the UN Convention on Contracts for the International Sale of Goods (CISG).

16.3 Should any dispute arise in connection with the Processor Agreement or its performance, the Parties shall in a positive, cooperative and responsible spirit seek to initiate negotiations for the purpose of settling the dispute. If necessary, attempts must be made to transfer negotiations to executive level in the Parties' respective organisations.

16.4 If the Parties are unable to solve the dispute by negotiation, the Parties are entitled to demand that the dispute be finally settled by the ordinary courts of law. This agreement shall be governed, construed, and enforced in accordance with the laws of the State of Berlin, Germany, without regard to its conflict of laws rules.

17. Precedence

17.1 In the event of any discrepancies between this Processor Agreement and the agreement(s) on delivery of the Primary Services, this Processor Agreement takes precedence, unless otherwise directly specified in the Processor Agreement.

APPENDIX 1

PRIMARY SERVICE

1. Primary Service

1.1 The Primary Service consists of the following: Wonderwerk is a training platform which is owned by Wonderwerk GmbH. Wonderwerk allows managers to create and assign training programs to employees within the company. Wonderwerk will process this data to provide insights to its customers.

2. Personal data

2.1 Types of personal data processed in connection with the delivery of the Primary Service:

a) General personal data, including : Full name, Email (work), Title, Profile Picture, Team/Department.

b) Service data, Wonderwerk stores data during the use of the service, this is needed to provide the service. This data includes : Training programs, test and assignment scores, completion data,, team data (members of the team, manager of the team), ACL (who has a access to what time, part of the service).

APPENDIX 2

DOCUMENTATION FOR COMPLIANCE WITH OBLIGATIONS

As part of the Processor's demonstration to the Controller of compliance with its obligations according to clause 4.3 of the Processor Agreement, the following points must be completed and observed.

1. General documentation to the Controller

1.1 Upon written request, the Processor is obliged to submit the following general documentation to the Controller:

a) A declaration from the Processor's management specifying that, during the processing of personal data on behalf of the Controller, the Processor continuously ensures compliance with its obligations under this Processor Agreement.

b) A description of the practical measures, both technical and organisational, implemented by the Processor to ensure compliance with its obligations under the Processor Agreement. The description may include a presentation of established and implemented management systems for information security and for processing of personal data as well as a description of other initiatives taken. As part thereof, the Processor is also obliged to participate in follow-up meetings with the Controller.

c) A description of the control measures taken and implemented by the Processor for measurement and control of the effect of the established management system for information security and processing of personal data and performance measurements thereof.

1.2 The general documentation must be provided no later than ten working days after the Controller has made its written request to the Processor, unless otherwise specifically agreed. The Processor shall prepare documentation for its own account.

2. Physical meeting at the Processor's premises

2.1 Upon request, the Processor shall participate in a physical meeting at the premises of the Processor or the Controller. At the meeting the Processor must be able to give an account of compliance and how compliance is ensured. A request for a meeting must be made subject to at least 45 days' notice.

3. Audit

3.1 Upon written request, the Processor shall contribute to and give access to audit.

3.2 The audit must be conducted by an independent third party selected by the Controller and approved by the Processor. The Processor may not reject a suggested third party without reasonable cause. The independent third party must accept a general confidentiality agreement with the Processor. A request for audit must be made subject to at least 45 days' notice.

3.3 The Processor is entitled to payment for time spent and materials consumed for assistance pursuant to this clause 4, unless otherwise specified in appendix 4.

4. Other conditions

4.1 The above points should not be considered exhaustive, and the Processor therefore undertakes to take any such actions and measures as are necessary for the demonstration of the Processor's obligation under clause 4 of the Processor Agreement.

4.2 The Processor is not obliged to follow a request from the Controller according to this appendix 3 if the request is in violation of the personal data regulation. The Processor shall notify the Controller if the Processor finds that this is the case.

APPENDIX 3

SPECIFIC ASSISTANCE

1. Assistance

1.1 The Parties have agreed that the following specific tasks be undertaken by the Processor:

Task

The Processor undertakes with an independent third party auditor

The Processor provides documentation or insights of parts of the Processor's process and security measures

Payment

The Processor is entitled to a fee of 12,500€ for this service per audit.

The Processor is entitled to 200€ per Hour excl. VAT. A Scope of work will be pre approved by the Controller.

APPENDIX 4

CONTROLLER'S OBLIGATIONS

1. Obligations

1.1 The Controller has the following obligations

a) To ensure that the personal data are up-to-date

b) To ensure that the Instructions are lawful in relation to the personal data regulation in force from time to time

c) That the Instructions are appropriate in relation to this Processor Agreement and the Primary Service.

d) To ensure that only employees have access to Wonderwerk services

e) To ensure internal enforcement of guideline and best practice of usage of the service.

f) To ensure only non-business critical information is added to the Wonderwerk service.

APPENDIX 5

SUB-PROCESSORS

1. General

1.1   The Controller hereby approves that the Processor uses the following

Sub-Processors:

Service	Description
Mixpanel	Mixpanel is a business analytics service company. It tracks user interactions with web and mobile applications and provides tools for targeted communication with them. Its tool-set contains in-app A/B tests and user survey forms. Data collected is used to build custom reports and measure user engagement and retention.

Sendgrid	SendGrid provides a cloud-based email delivery service that assists businesses with email delivery. The service manages various types of email including shipping notifications, friend requests, sign-up confirmations, and email newsletters. It also handles internet service provider (ISP) monitoring, domain keys, sender policy framework (SPF), and feedback loops. Additionally, the company provides link tracking, open rate reporting.[20] It also allows companies to track email opens, unsubscribes, bounces, and spam reports.
Hubspot	HubSpot is a developer and marketer of software products for inbound marketing and sales. Its products and services aim to provide tools for social media marketing, content management, web analytics and search engine optimization.
Heroku	Heroku is a cloud platform as a service (PaaS) supporting several programming languages that is used as a web application deployment model. Heroku, one of the first cloud platforms, has been in development since June 2007, when it supported only the Ruby programming language, but now supports Java, Node.js, Scala, Clojure, Python, PHP, and Go. For this reason, Heroku is said to be a polyglot platform as it lets the developer build, run and scale applications in a similar manner across all the languages.
AWS	Amazon Web Services (AWS) is a subsidiary of Amazon.com that provides on-demand cloud computing platforms to individuals, companies and governments, on a paid subscription basis. The technology allows subscribers to have at their disposal a full-fledged virtual cluster of computers, available all the time, through the Internet. AWS's version of virtual computers have most of the attributes of a real computer including hardware (CPU(s) & GPU(s) for processing, local/RAM memory, hard-disk/SSD storage); a choice of operating systems; networking; and pre-loaded application software such as web servers, databases, CRM, etc. Each AWS system also virtualizes its console I/O (keyboard, display, and mouse), allowing AWS subscribers to connect to their AWS system using a modern browser. The browser acts as a window into the virtual computer, letting subscribers log-in, configure and use their virtual systems just as they would a real physical computer. They can choose to

	deploy their AWS systems to provide internet-based services for their own and their customers' benefit.
GDrive	Google Drive is a file storage and synchronization service developed by Google. Launched on April 24, 2012, Google Drive allows users to store files on their servers, synchronize files across devices, and share files. In addition to a website, Google Drive offers apps with offline capabilities for Windows and macOS computers, and Android and iOS smartphones and tablets. Google Drive encompasses Google Docs, Sheets and Slides, an office suite that permits collaborative editing of documents, spreadsheets, presentations, drawings, forms, and more. Files created and edited through the office suite are saved in Google Drive.
Hotjar	Hotjar is an analytics tools that includes heat maps, visitor recordings, conversion funnels, form analytics, polls, surveys and feedback tools.
Sentry	Sentry provides open source error tracking that shows you every crash in your stack as it happens, with the details needed to prioritize, identify, reproduce, and fix each issue. It also gives you information your support team can use to reach out to and help those affected and tools that let users send you feedback for peace of mind.
Papertrail	Papertrail is a cloud logging service which a) aggregates logs from network devices, operating systems, applications, and other infrastructure into a cloud-hosted/SaaS solution; b) gives the user the ability to troubleshoot issues using a browser, command line, or API to tail and search logs; c) allows users to get instant alerts.
Travis CI	Travis CI is a hosted, distributed continuous integration service used to build and test software projects hosted at GitHub.
GitHub	GitHub is a web-based hosting service for version control using git. It is mostly used for computer code. It offers all of the distributed version control and source code management (SCM) functionality of Git as well as adding its own

	features. It provides access control and several collaboration features such as bug tracking, feature requests, task management, and wikis for every project.
Ziggeo	Ziggeo is a cloud-based video technology SaaS company that provides asynchronous video APIs, mobile SDKs and tools to deliver enterprise-grade WebRTC capabilities.
Stripe	Stripe allows individuals and businesses to make and receive payments over the Internet. Stripe provides the technical, fraud prevention, and banking infrastructure required to operate online payment systems.
Youtube	YouTube is an American online video-sharing platform headquartered in San Bruno, California.

1.2 The Processor may use a Sub-Processor without prior specific written approval from the Controller. The Processor may only withhold such approval if specifically and reasonable justifiable.

1.3 The Controller is allowed to make objections to such a Sub-Processor if reasonably justifiable.

APPENDIX 6

TRANSFER TO THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS

1. General

1.1 Personal data may not be subjected to processing by the Processor or a Sub-Processor in a country outside the European Union or EEA (a "Third Country") or an international organisation, unless specifically permitted by the Controller.

1.2 The Processor shall notify the Controller of the transfer before it takes place.