# TEMPLATE DATA EXCHANGE AGREEMENT

[THIS DATA EXCHANGE AGREEMENT FORMS AN INTERGRAL PART OF THE AGREEMENT CONCLUDED BETWEEN THE PARTIES ON XX-XX-XXXX]

**THE PARTIES:**

* **[ORGANISATION, LEGAL ENTITY]**, having its registered office in [ADDRESS], and registered with the Chamber of Commerce under number XXXXXX, legally represented in this matter by XXXXXX, (hereinafter referred to as: ‘[**COMPANY X**]’);

and

* **[ORGANISATION, LEGAL ENTITY]**,having its registered office in [ADDRESS], and registered with the Chamber of Commerce under number XXXXXX, legally represented in this matter by XXXXXX, (hereinafter referred to as: ‘[**COMPANY Y**]’);

hereinafter collectively referred to as ‘**the Parties**’ and individually ‘**the** **Party**’;

**HAVING REGARD TO THE FACT THAT:**

* [THE PARTIES / [COMPANY X] / [COMPANY Y]] [IS/ARE] in the possession of various types of data, including Personal Data;
* the Parties shall process the Personal Data under their own responsibility, as they independently determine the purpose and means of the processing of Personal Data and are both individually responsible for having a lawful basis for the processing of Personal Data;
* accordingly, both Parties can be deemed a controller within the meaning article 4 (7) of the EU Data Protection Regulation (hereinafter referred to as: ‘**GDPR’**), and are not each other’s processor within the meaning of article 4 (8) of the GDPR;
* the Parties undertake to comply with this data exchange agreement (hereinafter: ‘the Data Exchange Agreement’) and to abide by the security obligations and all other aspects of the EU Data Protection Regulation (Regulation 2016/679) or all other applicable laws and regulations relating to the processing of Personal Data (hereinafter collectively referred to as: ‘Applicable Data Protection Law’);
* the Parties, with a view to the careful processing of Personal Data, wish to make arrangements regarding the exchange of Personal Data within this Data Exchange Agreement;

**HAVE AGREED AS FOLLOWS:**

1. **DEFINITIONS**

The terms used in this Data Exchange Agreement shall be understood to mean the following:

* 1. **Annex 1**: the annex to this Data Exchange Agreement, specifying the Dataset.
	2. **Personal Data**: personal data within the meaning of Article 4 (1) of the GDPR.
	3. **Dataset**: the Personal Data to be exchanged between the Parties in the form of a dataset, as specified in Annex 1.
1. **OBLIGATIONS OF THE PARTIES**
	1. For the purpose of [SPECIFY PURPOSE], [THE PARTIES / [COMPANY X] / [COMPANY Y]] shall make the Dataset available to [EACH OTHER / [COMPANY X] / [COMPANY Y]] and shall use reasonable endeavours to safeguard the quality of the Dataset.
	2. The Parties declare to process the Personal Data, as specified in Annex 1, in a proper and careful manner.
	3. With respect to the processing of Personal Data, each Party is individually responsible for compliance with applicable laws and regulations, including but not limited to Applicable Data Protection Law. In particular, each Party is individually responsible for having a lawful basis to process the Personal Data.
	4. The Parties will only provide each other with the amount of Personal Data necessary to fulfil the purpose referred to in Article 2.1. The Parties shall not use the Personal Data for any other purpose than referred to in Article 2.1.
	5. The obligations arising under this Data Exchange Agreement apply also to whomsoever processes Personal Data under the respective Party’s instructions and/or authority.
	6. If one of the Parties engages a third party (hereinafter referred to as: ‘Sub-Processor’) for the processing of Personal Data, this Party shall ensure that the Sub-Processor processes the Personal Data in a proper and careful manner, in accordance with Applicable Data Protection Law and this Data Exchange Agreement. The Party that engages a Sub-Processor, shall in any event ensure that the Sub-Processor will be obliged to agree in writing to obligations no less stricter than the obligations agreed by and between the Parties.
	7. The Parties shall indemnify each other for any claims and procedures of third parties, including but not limited to supervisory authorities, such as the Dutch Data Protection Authority (Autoriteit Persoonsgegevens), and data subjects, resulting from such Party’s breach of Applicable Data Protection Law and/or this Data Exchange Agreement.
	8. Nothing in this Data Exchange Agreement shall be construed so as to transfer any form of (intellectual) property rights in or to the Data(set) from one Party to the other Party.
2. **DUTY TO REPORT**
	1. In the event of a personal data breach, within the meaning of article 4 (12) of the GDPR, with respect to the Personal Data processed in relation to this Data Exchange Agreement, the Parties shall, to the best of their ability, notify the other Party thereof without undue delay, but in any event not later than thirty six (36) hours. The notification obligation applies regardless of the impact of the personal data breach.
	2. After notification of the personal data breach (as referred to in Article 3.1), the Parties will discuss in good faith what the (potential) consequences of the personal data breach are for either of the Parties, and how each Party should minimise the (potential) damage.
	3. The Parties are and remain individually responsible for reporting a personal data breach, occurred during the processing under its own responsibility, to the relevant supervisory authority and/or the affected data subjects.
	4. The Parties will provide each other with all reasonably necessary assistance (e.g. by providing relevant information), in order to assist the other Party in reporting the personal data breach to the relevant supervisory authority and/or the affected data subjects.
3. **SECURITY**
	1. The Parties shall each take adequate technical and organisational measures to protect the Dataset against loss or any form of unlawful processing (such as unauthorised disclosure, deterioration, alteration or disclosure of Personal Data).
	2. Upon request, the Parties shall provide each other with information about the security measures that have been implemented to adequately protect the Dataset.
	3. None of the Parties shall reverse or circumvent any of the security measures implemented by the other Party.
4. **NONDISCLOSURE AND CONFIDENTIALITY**
	1. All Personal Data exchanged within the framework of this Data Exchange Agreement is subject to a duty of confidentiality towards third parties.
	2. This duty of confidentiality will not apply in the event that the disclosing Party has expressly authorised the furnishing of such Personal Data to third parties, where the furnishing of the Data to third parties is reasonably necessary in view of the nature of the obligations and the implementation of this Data Exchange Agreement, or if there is a legal obligation to make the Personal Data available to a third party.
	3. If one of the Parties is summoned by a competent court or other authority to submit Personal Data of the other Party for the benefit of a judicial investigation or legal proceedings, it is entitled to do so. However, before submitting the Personal Data, the Party being summoned must inform the other Party as soon as possible about the summons, to provide it with the opportunity to object to the Personal Data being submitted, unless the summons bars it from doing so. Should such Party elect to do so, the other Party must delay the required disclosure to the greatest extent possible by applicable law.
5. **HANDLING REQUESTS FROM DATA SUBJECTS**
	1. Where a data subject submits a request to one of the Parties to exercise one of its legal rights under Applicable Data Protection Law, this Party will independently deal with such request if it falls within the scope of its own processing activities for which the Party concerned is responsible.
	2. If the request, as referred to in Article 6.1, relates to the processing for which the requested Party is not responsible, then the request must be forwarded to the responsible Party. The data subject may be notified hereof.
	3. In case it is necessary, the Parties will reasonably assist each other to enable the data subject to exercise its legal rights.
6. **DURATION AND TERMINATION**
	1. This Data Exchange Agreement enters into force upon its signing by both Parties on the date of the last signature.
	2. This Data Exchange Agreement is entered for the duration of [SPECIFY DURATION OF THE DATA EXCHANGE AGREEMENT [OR] THE AGREEMENT]
	3. [SPECIFY NOTICE PERIOD FOR TERMINATION: THIS DATA EXCHANGE AGREEMENT MAY BE TERMINATED BY EITHER PARTY AT ANY TIME UPON SERVING [XX] MONTHS’ WRITTEN NOTICE TO THE OTHER PARTY].
	4. This Data Exchange Agreement may only be amended by the Parties subject to mutual agreement.
7. **MISCELLANEAOUS**
	1. The Data Exchange Agreement and its implementation will be governed by [SPECIFY] law.
	2. Any dispute arising between the Parties in connection with and/or arising from this Data Exchange Agreement will be referred to the competent court in [SPECIFY].
	3. The Parties shall provide their full cooperation in amending and adjusting this Data Exchange Agreement in the event of new or amended privacy legislation.
	4. If any provision of the Data Exchange Agreement should appear void or otherwise unenforceable, this will not affect the validity of the Data Exchange Agreement as a whole. The Parties shall in that event agree a new provision or new provisions, by which the intention of the original provision(s) is as much as possible reflected.

**IN WITNESS WHEREOF, the Parties have caused this Data Exchange Agreement to be executed by their duly authorized representatives:**

**[COMPANY X] [COMPANY Y]**

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*Date Date*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Name Name*

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*Signature Signature*

**ANNEX 1: DATASET**

[SPECIFY PERSONAL DATA TO BE EXCHANGED BETWEEN THE PARTIES]