# TEMPLATE DATA PROCESSING AGREEMENT

**THE PARTIES:**

* **[ORGANISATION, LEGAL ENTITY DATA CONTROLLER]**, 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: ‘**the Controller**’);

and

* **[ORGANISATION, LEGAL ENTITY DATA PROCESSOR]**,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: ‘**the Processor**’);

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

**HAVING REGARD TO THE FACT THAT:**

* the Controller has access to the personal data of various individuals (hereinafter referred to as: ‘**Data subjects**’);
* the Controller wants the Processor to execute certain types of processing in accordance with the agreement concluded with the Processor on XX-XX-XX (hereinafter referred to as: ‘**the Agreement**’), in order to provide [CLEARLY SPECIFY THE SERVICES TO BE PROVIDED BY THE PROCESSOR];
* the Controller has determined the purpose of and the means for the processing of personal data as governed by the terms and conditions referred to herein;
* the Processor undertakes to comply with this data processing agreement (hereinafter: ‘**the Data Processing 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**’);
* this Data Processing Agreement forms an integral part of the Agreement;
* the Controller is hereby deemed to be the controller within the meaning of Article 4 (7) of the GDPR;
* the Processor is hereby deemed to be the processor within the meaning of Article 4 (8) of the GDPR;
* the Parties, having regard to the provisions of Article 28 (3) of the GDPR, wish to lay down their rights and duties in writing in this Data Processing Agreement;

**HAVE AGREED AS FOLLOWS:**

1. **PROCESSING OBJECTIVES**
   1. The Processor undertakes to process personal data on behalf of the Controller in accordance with the conditions set forth in this Data Processing Agreement. The processing will be executed exclusively within the framework of the Agreement, and for all such purposes as may be agreed to by and between the Parties in writing.
   2. The personal data processed by the Processor, and the categories of Data subjects to whom the personal data relates, are specified in Annex 1.
   3. When carrying out the processing activities, the Processor shall act only on the documented instructions from the Controller and for the purposes authorised by the Controller.
   4. The Processor shall take no unilateral decisions regarding the processing of the personal data for other purposes, including decisions regarding the provision thereof to third parties and the storage duration of the personal data.
   5. All rights attached to the personal data processed on behalf of the Controller shall remain with the Controller and/or the relevant Data subjects.
2. **PROCESSOR’S OBLIGATIONS**
   1. The Processor shall furnish the Controller immediately on request with details regarding the measures it has adopted to comply with its obligations under this Data Processing Agreement and Applicable Data Protection Law.
   2. The Processor’s obligations arising under the terms of this Data Processing Agreement apply also to whomsoever processes personal data under the Processor’s instructions.
3. **TRANSMISSION OF PERSONAL DATA**
   1. The Processor may process the personal data in countries within the European Union. The transmission to countries outside the European Union shall at all times be subject to prior written approval of the Controller.
   2. The Processor shall notify the Controller as to which country or countries the personal data will be processed in.
   3. Any transfer of personal data outside the European Union to the Processor or any third party (hereinafter referred to as: ‘Sub-Processors’) in a non-adequate country shall be governed by the terms of the standard contractual clauses of the European Commission.
4. **ALLOCATION OF RESPONSIBILITY**
   1. The Processor shall be responsible for processing the personal data under this Data Processing Agreement in accordance with the Controller’s documented instructions.
   2. The Processor is expressly not responsible for other processing of personal data, including but not limited to, the collection of personal data by the Controller, processing for purposes that are not reported by the Controller to the Processor and processing by third parties other than the Sub-Processors under this Data Processing Agreement.
5. **ENGAGING OF SUB-PROCESSORS**
   1. The Controller hereby gives general authorisation to to engage Sub-Processors within the framework of the Agreement. The Processor shall inform the Controller about any intended changes concerning the addition or replacement of Sub-Processors.
   2. The Controller has the right to object against any Sub-Processors engaged by the Processor. In case of objection by the Controller, the Parties hereby agree to resolve this matter in good faith.
   3. The Processor shall in any event ensure that the Sub-Processors will be obliged to agree in writing to obligations no less stricter than the obligations agreed by and between the Parties in this Data Processing Agreement.
6. **DUTY TO REPORT**
   1. In the event of a personal data breach, within the meaning of article 4 (12) of the GDPR, the Processor shall, to the best of its ability, notify the Controller thereof without undue delay, but in any event not later than thirty six (36) hours, after which the Controller shall determine whether or not to inform the relevant supervisory authority and/or the Data subjects. The Controller is responsible for fulfilment of any statutory notification obligations. The Processor shall promptly take adequate remedial measures.
   2. If required by law and/or legislation, the Processor shall fully cooperate in notifying the relevant Data subjects and/or the relevant supervisory authority.
   3. The notification obligation includes in any event the duty to report the fact that a personal data breach has occurred, including details regarding:
   * the (suspected) cause of the personal data breach;
   * the contact point where more information can be obtained;
   * the approximate number of Data subjects and number of personal data records concerned;
   * the (currently known and/or anticipated) consequences thereof;
   * the (proposed) solution;
   * the measures that have already been taken.
7. **SECURITY**
   1. The Processor shall implement appropriate technical and organisational measures with regards to the processing of personal data in order to safeguard a level of security appropriate to the risk, in accordance with the GDPR, in particular from loss or any form of unlawful processing such as accidental or unlawful destruction or unauthorised disclosure or access, deterioration, alteration of personal data and against all other forms of unlawful processing, including, but not limited to, unnecessary collection or further processing in connection with the performance of processing personal data under this Data Processing Agreement.
   2. Documentation regarding the implemented security measures shall be available upon the Controller’s request.
8. **HANDLING REQUESTS FROM DATA SUBJECTS**
   1. Where a Data subject submits a request to the Processor to exercise one of its legal rights, the Processor shall deal with this request if it relates to processing that pertains to the Processor’s own processing activities. In all other cases, the Processor will forward the request to the Controller and the request will then be dealt with by the Controller. The Processor may notify the Data subject hereof.
   2. The Processor shall cooperate where requested by the Controller in so far as is possible and reasonable.
9. **NONDISCLOSURE AND CONFIDENTIALITY**
   1. All personal data received by the Processor from the Controller and/or compiled by the Processor within the framework of this Data Processing Agreement is subject to a duty of confidentiality towards third parties. The Processor shall refrain from using the personal data for any purpose other than that for which it was furnished, even where made available in a manner that is not traceable to the Data subjects.
   2. This duty of confidentiality will not apply in the event that the Controller has expressly authorised the furnishing of such information to third parties, where the furnishing of the information to third parties is reasonably necessary in view of the nature of the instructions and the implementation of this Data Processing Agreement, or if there is a legal obligation to make the information available to a third party.
10. **AUDIT AND COMPLIANCE**
    1. To confirm compliance with this Data Processing Agreement, the Controller has the possibility to conduct an audit by assigning an independent third party who shall be obliged to observe confidentiality in order to verify compliance with this Data Processing Agreement. The costs of the audit shall be borne by the Controller.
    2. The Controller may perform this audit once a year, or more often in case of a concrete suspicion of misuse of personal data. Audits must be notified two (2) weeks in advance. Furthermore, any such audit will follow the Processor’s reasonable security requirements and will not unreasonably interfere with the Processor’s day-to-day business operations.
    3. The findings in respect of the audit will be discussed and evaluated by the Parties and, where applicable, implemented by one of the Parties or by both Parties jointly.
    4. The Processor will provide any reasonably necessary assistance if a data protection impact assessment, or a prior consultation with a supervisory authority, is necessary with respect to the processing of personal data. The Processor is entitled to charge the Controller any reasonable costs in connection herewith.
11. **DURATION AND TERMINATION**
    1. This Data Processing Agreement is entered into for the duration set out in the Agreement, and in the absence thereof, for the duration that personal data of the Controller are being processed by the Processor.
    2. The Data Processing Agreement may not be terminated in the interim.
    3. This Data Processing Agreement may only be amended by the Parties subject to mutual consent.
    4. The Parties shall provide their full cooperation in amending and adjusting this Data Processing Agreement in the event of new privacy legislation.
    5. Upon termination of the Data Processing Agreement, the Processor shall, at the request of the Controller, return the personal data to the Controller and/or shall securely destroy such personal data, except to the extent the Agreement or applicable law provides otherwise.
12. **APPLICABLE LAW AND DISPUTE RESOLUTION**
    1. The Data Processing 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 Processing Agreement will be referred to the competent court in [SPECIFY].
    3. If any provision of the Data Processing Agreement should appear void or otherwise unenforceable, this will not affect the validity of the Data Processing 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 Processing Agreement to be executed by their duly authorized representatives:**

**The Controller The Processor**

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*Date Date*

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

*Name Name*

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*Signature Signature*

**ANNEX 1: PERSONAL DATA AND DATA SUBJECTS**

**PERSONAL DATA**

Within the framework of the Agreement, the Processor will process the following categories of personal data:

* [SPECIFY]

**CATEGORIES OF DATA SUBJECTS**

The categories of Data subjects to whom the personal data relate are:

* [SPECIFY]