* 1. **DATA PROCESSING AGREEMENT**
	2. THE UNDERSIGNED:
* NAME\_HERE., a private limited company having its registered place of business at PLACE, registered with the Trade Register under number NUMBER, (referred to hereinafter as: ‘**Controller**’);
* NAME\_HERE., a private limited company having its registered place of business at PLACE, registered with the Trade Register under number NUMBER (referred to hereinafter as: ‘**Data Processor**’)
	1. Controller and Data Processor each separately referred to as "Party" and jointly as "Parties".
	2. WHEREAS:
		+ 1. Data Processor provides services on behalf of Controller, which services have been listed and specified in Appendix 1 (hereinafter: ‘Legal Relationship’);
			2. Controller, for the purpose of the Legal Relationship, will provide data to Data Processor, and Data Processor will process this data on behalf of Controller;
			3. The data referred to above is considered personal data (hereinafter: ‘Personal Data’), in respect of which Controller is its Controller and Data Processor is its Data Processor within the meaning of the General Data Protection Regulation (EU) 2016/679 (hereinafter: ‘GDPR’) and the GDPR Implementation Act;
			4. Controller wishes to protect the ………. Personal Data of …….. (hereinafter: ‘Data Subjects’) and the processing of such Data by Data Processor in accordance with the provisions of the GDPR;
			5. Parties wish to lay down their agreements with respect to the processing of the Personal Data in this Agreement (hereinafter: ‘Data Processing Agreement’) in writing.
	3. HAVE AGREED AS FOLLOWS:
		+ 1. Scope of Data Processing Agreement
				1. The provisions of this Data Processing Agreement shall prevail over oral or written agreements between the parties with respect to their Legal Relationship.
				2. Data Processor will process the Personal Data for Controller exclusively and only in accordance with the purpose and the instructions provided by Controller in writing.
				3. Each Party shall ensure that the processing of Personal Data will take place in accordance with the provisions set out in e.g. the GDPR or its successor legislation and regulations. If necessary Controller will ensure that it obtains the consent of the Data Subjects and that it complies with other statutory bases for collection and processing of Personal Date provided by the GDPR.
				4. Controller shall provide the Personal Data on a ‘need-to-know’ basis only.
				5. Data Processor will provide to Controller, to the extent as possible, all assistance to allow Controller to comply with its statutory obligations under the GDPR with respect to i) the rights of Data Subjects, ii) notification of a breach in connection with Personal Data, iii) data protection impact analysis, and iv) consultation of the Personal Data Authority prior to processing.
				6. Data Processor shall immediately notify Controller of any failure in compliance with the provisions of this Data Processing Agreement on the part of Data Processor or its personnel.
				7. After a prior, timely, written request of Controller Data Processor shall provide to Controller all information which Controller needs to show compliance with obligations of Data Processor and facilitate checks or audits.
				8. Data Processor shall immediately notify Controller in case a given instruction as referred to in article 1.3. would result in an infringement of statutory provisions for the protection of Personal Data.
				9. This Processor Agreement relates to the processing of Personal Data by the Processor on behalf of the Controller in the context of the implementation of the Main Agreement. An overview of the type of personal data, the categories of data subjects and the purposes of processing is included in Appendix 1.
				10. Processor is obliged to keep a register as referred to in Article 30 paragraph 2 GDPR of all categories of processing activities that they have carried out for the benefit of Controller.
			2. Conclusion, duration and termination of Data Processing Agreement
				1. This Data Processing Agreement will commence on the date at which it has been signed by both Parties on (or so much earlier as) the time at which the Legal Relationship between the Parties was created. The duration of the Data Processing Agreement is identical with the duration of the Legal Relationship between the Parties.
				2. In case the Legal Relationship is terminated or ceases to exist this Data Processing Agreement will expire automatically. Neither Party may prematurely terminate this Data Processing Agreement.
				3. Upon request of Controller and in case of termination of the Legal Relationship Data Processor shall immediately return to Controller or destroy, at the discretion of Controller, all Personal Data made available to Data Processor, unless storage of Personal Data results from a statutory obligation.
				4. Upon request of Controller Data Processor will provide to Controller a declaration in which Data Processor declares that the Personal Data has been returned, is no longer processed and is not available in other data files of Data Processor.
				5. This Processor Agreement shall take effect on the date the underlying agreement becomes effective and ends when the agreement ends.
				6. Upon termination of this Processor Agreement, Processor will, at the discretion of Controller, destroy and / or return the Personal Data in a commonly used format (if applicable).
			3. Security and control
				1. Data Processor shall implement appropriate technical and organisational protection measures, including but not limited to the measures referred to in article 3.5 of this Data Processing Agreement, to protect the Personal Data against accidental or unlawful destruction, loss, accidental alteration, unauthorised or unlawful storage, access or disclosure.
				2. These measures shall, taking into account the state of technology, the costs of implementation of the measures and their application, the nature, scope, context and purpose of processing and the risks for the rights and freedoms of Data Subjects, ensure an appropriate level of security, taking into account the risks involved in the processing of Personal Data and the nature of such risks.
				3. Upon request Data Processor shall immediately draw up a declaration stating the measures taken in connection with its acts as Data Processor.
				4. Controller has the right to conduct (cause to conduct) an audit concerning compliance with the obligations of Data Processor under this Data Processing Agreement. This audit will take place only after Controller has requested and evaluated similar relevant audit reports available at Data Processor, and brings reasonable arguments that justify a subsequent audit to be initiated by Controller. Such an audit is justified if similar audit reports available at Data Processor do not or not sufficiently provide assurance of compliance with this Data Processing Agreement by Data Processor. The audit initiated by Controller will take place two weeks after its announcement by Controller, and no more than once every calendar year.
				5. Controller obliges Data Processor to protect the Personal Data in accordance with the following standards or to take the following specific protection measures:

Pseudonymisation and encryption of Personal Data;

Ensuring the possibility that the confidentiality, integrity, availability and resilience of the processing systems and services are guaranteed on a permanent basis;

Ensuring the possibility that the availability of and access to the Personal Data is restored in a timely manner in case of a physical or technical incident;

Providing a procedure for regular testing, assessment and evaluation of the effectiveness or the technical and organisational measures for the security of processing; measures that guarantee that the Personal Data that is processed under the Data Processing Agreement can be accessed only by personnel for whom access is necessary for the performance under the Legal Relationship (authorizations);

* + - * 1. Processor will take appropriate technical and organizational measures with regard to the processing of Personal Data to be carried out, against loss or against any form of unlawful processing (such as unauthorized access, damage, modification or provision of the Personal Data). These will be recorded in Appendix 2.

Measures to identify weak spots and security breaches in the systems used for the performance of the Order and processing of Personal Data;

* + - 1. Confidentiality and secrecy
				1. Data Processor and its personnel shall handle the Personal Data provided in a strictly confidential manner. The Parties further agree that unauthorized personnel will not have access to the Personal Data. Data Processor is obliged to ensure that all those working under its responsibility or authority is subject to a duty of confidentiality.
				2. Data Processor and those working under its responsibility or authority are obliged to keep secret any Personal Data and information which they process under this Data Processing Agreement, except to the extent that such data or information is apparently not confidential or secret in nature or is already generally known or in case any statutory provision requires disclosure by Data Processor.
			2. Obligation to notify breaches in connection with Personal Data
				1. Data Processor shall notify the Privacy Officer of Controller of any breaches in connection with Personal Data as defined in article 4 under 12 of the GDPR, within 24 hours of discovery of such breaches, providing the information as referred to in Appendix 2.
				2. Data Processor shall provide to Controller all necessary information and shall provide all necessary assistance to enable Controller to establish the cause and extent of the breach and to comply with its obligations resulting from articles 33 and 34 GDPR.
			3. Processing by sub-processors, transfer of data to third parties
				1. Data Processor is not authorized to engage third parties (such as sub-processors) without the prior written approval of Controller.
				2. Data Processor is at any time obliged to ensure that third parties engaged (such as sub-processors) will assume in writing the same obligations as those agreed between Controller and Data Processor. Data Processor shall ensure correct compliance with these obligations on the part of those third parties and, in case of error(s) on the part of those third parties, shall itself be liable to Controller for any damage, as if Data Processor itself committed the error(s).
				3. [Deleted]
				4. Data Processor shall not provide or make available to any third party (not being sub-processors as referred to in article 6.1) the Personal Data it has received from Controller without the prior approval of Controller, unless on the basis of an express, written instruction of Controller or unless ordered to do so by a judicial or administrative authority, on condition that in that case Data Processor will inform Controller of that within 24 hours of receipt of such order.
				5. Data Processor shall not store and/or process the Personal Data in countries outside the European Economic Area without the written approval of Controller.

Data Processor shall process or store the Data, including its backup, in a location in the European Economic Space (EES). They are the following locations in the following countries:

* + - 1. Penalty
				1. In case of non-compliance with any obligations resulting from this Data Processing Agreement, Data Processor shall forfeit to Controller an immediately due and payable penalty in the amount of € 500,00 for each non-compliance and € 250,00 for each day during which the non-compliance continues.
				2. The provisions of article 7.1 do not prejudice the right to demand compliance and Controller’s right to claim damages.
			2. Liability
				1. The liability resulting from the Legal Relationship between the Parties notwithstanding, Data Processor shall be liable for all damage resulting from or in connection with failures in the performance of this Data Processing Agreement or acts in violation of the GDPR or GDPR Implementation Act.
				2. Data Processor indemnifies Controller from and against fines and/or penalties imposed on Controller by and/or on behalf of the Personal Data Authority and/or other competent authority, for that part of the fine and/or penalty that relates to the processing operation for which Data Processor is responsible under the Legal Relationship or this Data Processing Agreement.
				3. Data Processor indemnifies Controller from and against any claims of third parties, including Data Subjects, as a result of a violation of this Data Processing Agreement or applicable legislation on the part of Data Processor. Data Processor shall compensate any costs in connection with or resulting from that (also including costs of legal assistance) and damage of Controller.
			3. Final Provisions
				1. This Data Processing Agreement is governed by Dutch law.
				2. All intellectual property rights in the Personal Data and in the databases containing this Personal Data shall vest in Controller, unless contractually agreed otherwise between the Parties.
				3. This Data Processing Agreement and any separate rights and obligations under this Data Processing Agreement cannot be transferred to any third parties by the Parties without the prior, written approval of the other Party.
				4. Modifications of this Data Processing Agreement may be agreed between the Parties in writing only.
				5. In case one or more provisions of this Data Processing Agreement are not legally valid the remaining provisions of the Data Processing Agreement shall remain in full force and effect. The Parties shall consult on the provisions that are not legally valid in order to work out an alternative arrangement that is legally valid and aligns, to the extent as possible, with the purport of the provision that is to be replaced.
				6. In the event that a data subject submits a request to exercise his legal rights (Article 15-22 GDPR) to Processor, Processor will forward the request to Controller, and Controller will further process the request. Processor may inform the data subject of this.
				7. Taking into account the nature of the processing and the information available to Processor, Processor will provide Controller with assistance in enforcing the obligations of Articles 32 to 36 of the GDPR.
				8. Processor will inform Controller, upon first request, about the measures it has taken with regard to its obligations under this Processor Agreement.

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