**HES Data Processing Agreement**

This data processing agreement (the'**Data** **Processing Agreement**') has been concluded between:

**THE PARTIES:**

1. **Processor**

|  |  |  |
| --- | --- | --- |
| Company name in full | : |  |
| Registered office | : |  |
| Business address  | : |  |
| Zip code | : |  |
| validly represented by | : |  |

referred to below as ‘the **Processor’**

and

1. **The Controller**

‘\*\*\*’, a private limited company with registered office and principal business address at Weena 690, 3012 CN Rotterdam, referred to below as ‘**HES’**;

jointly referred to below as ‘the **Parties’**

**WHEREAS:**

1. HES and the Processor entered into an agreement on [*date*] regarding [*include* *description*]. referred to below as the ‘Framework Agreement’;
2. On the basis of the Framework Agreement, the Processor will process personal data for and/or on behalf of HES;
3. The General Data Protection Regulation (Regulation (EU) 2016/679) referred to below as the ‘**GDPR’**) requires the Parties to enter into an agreement that describes in detail the processing of the personal data (pursuant to article 28(3) of the GDPR);
4. The Parties therefore enter into this Data Processing Agreement. This Data Processing Agreement is an integral part of the Agreement;

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. **The Processing**
	1. If and in so far as the Processor processes or will process personal data within the context of or in connection with this Data Processing Agreement (the **'Personal** **Data'**), the parties agree that the Processor will act as the processor and HES as the controller as defined in the GDPR.
	2. The Processor undertakes to process Personal Data under the conditions of this Data Processing Agreement. The Processor will only process the Personal Data (including also the transfer of personal data to a third country or an international organisation) based on and in accordance with HES’ written instructions. Personal Data will only be processed in the performance of the work agreed in the Framework Agreement for the duration specified in the Framework Agreement.
	3. The Processor will only process the Personal Data that is necessary for performance of the work agreed in the Framework Agreement and only on the instructions of HES. A description of the processing activities to be performed by the Controller is set out in Annex 1 (*Description of Processing Activities*) to this Data Processing Agreement and is an integral part hereof.[[1]](#footnote-1)
	4. The Personal Data to be processed on the instructions of HES belongs at all times to HES or the relevant data subjects, as appropriate. The Processor guarantees that it will not use the Personal Data that are processed under this Data Processing Agreement for its own purposes or for the purposes of third parties in any way whatsoever without HES’ explicit and written consent.
2. **Reasonable assistance of the Processor**
	1. In its processing of the Personal Data under this Data Processing Agreement, the Processor shall at all times comply and act in accordance with the relevant laws and regulations, including all laws and regulations pertaining to the protection of personal data, such as the GDPR, and shall promptly inform HES in writing if, in its opinion, to follow an instruction given by HES as contemplated by this Data Processing Agreement would give rise to a breach of applicable data protection legislation.
	2. The Processor shall provide reasonable assistance to HES in order to enable HES to continue to meet its obligations under the applicable data protection legislation, including but not limited to obligations regarding security, notifications of Security Incidents (as defined in clause .3), data protection impact assessments and/or consultation obligations with the competent authorities . The time and resources invested in this work, and the costs involved, will be charged by the Processor to HES.
3. **Transfer of personal data**
	1. The Processor will only process Personal Data in countries within the European Economic Area. Transfers to countries outside the European Economic Area or to international organisations is not permitted without the prior written consent of HES for that purpose, in respect of which consent HES may set additional conditions and requirements, such as entering into the standard data protection clauses as referred to in Article 46(2)(c) GDPR.
4. **Use of Sub-processors**
	1. [The Processor may only use Sub-processors (as defined below) in the performance of this Data Processing Agreement with HES’ prior specific consent in writing.] [OR] [The Processor may only use Sub-processors (as defined below) in the performance of this Data Processing Agreement if HES has not objected against the use of a Sub-processor within [14] days after having been informed of such Sub-processor.]
	2. The obligations of the Processor under this Data Processing Agreement and the under the applicable data protection legislation also bind persons who process the Personal Data under the control of the Processor, including, but not limited to, employees and service providers ('**Sub-processors**'). The Processor shall enter into an agreement with any Sub-processor referred to in the preceding section, under which the said Sub-processor will be bound by the same obligations as agreed between HES and the Processor in this Data Processing Agreement.
	3. The Processor is, in the event of errors by a Sub-processor, itself liable to HES for all loss as though it had made such errors itself.
5. **Security**
	1. Taking into account the risks associated with the processing of Personal Data and the nature of the data to be protected, the Processor will implement and maintain appropriate technical and organisational measures to ensure an appropriate level of security and to protect the Personal Data against loss or any form of unlawful processing (such as unauthorised disclosure, violation, alteration or transmission) of the Personal Data.
	2. Upon HES’ first request, the Processor will send HES a document containing an overview and a description of the appropriate technical and organisational measures taken by the Processor.
	3. If, at any time, the Processor is aware of, or suspects that a breach of security involving or affecting Personal Data ("**Security Incident**") has taken place, the Processor will notify HES in writing immediately, and no later than 24 hours after the Processor becoming aware of (the suspicion of) a Security Incident, regarding the Security Incident and its consequences, which notification will be sufficiently detailed as to enable HES to establish whether a Security Incident has taken place and which will contain the information required for notifying the relevant Security Incident in accordance with the GDPR.
	4. In connection with each Security Incident, the Processor will furthermore take all (required and/or requested) steps to identify and remedy the underlying cause of the Security Incident in order to prevent or minimise the risk of repetition and the occurrence of similar Security Incidents.
6. **Duty to notify**
	1. HES is responsible at all times for reporting to the supervisor and/or data subjects any security leak or data leak (including a breach of security concerning Personal Data that leads to a risk of adverse consequences, or that has adverse consequences, for the protection of Personal Data). To enable HES to comply with this statutory obligation, the Processor shall notify HES without unreasonable delay, and in any event within 48 hours after becoming aware of the Personal Data breach , in relation to Personal Data processed under this Data Processing Agreement.
	2. The Processor shall always give notice to HES as referred to in the preceding section, but only if the Personal Data breach has actually occurred.
	3. The Processor’s notice to HES shall be in writing (sent by e-mail) and shall be in accordance with the requirements under the GDPR.
7. **Data subjects' rights**
	1. In the event that a data subject seeks to exercise his/her statutory rights against the Processor, the Processor shall forward the request to HES, and HES will deal further with the request. The Processor may inform the data subject about this.
	2. The Processor will furthermore provide assistance to HES by taking appropriate technical and organisational measures to respond to requests from data subjects for access to or rectification, erasure or portability of Personal Data or restriction or objection to the processing of Personal Data, on the understanding that the Processor will not respond to such requests other than following the prior written instructions from HES.
8. **Confidentiality**
	1. The Processor must observe the duty of confidentiality pertaining to all Personal Data that the Processor receives from HES and/or collects itself in the context of this Data Processing Agreement. The Processor will ensure that the persons, including contract workers and third parties, that have access to or are authorised to process the Personal Data have committed themselves to this duty of confidentiality.
	2. This duty of confidentiality does not apply (i) insofar as HES has expressly consented to supplying information to third parties; (ii) if the supply of this information to third parties is logically necessary having regard to the nature of the instructions and the performance of this Data Processing Agreement; or (iii) if there is a statutory obligation to supply this information to a third party.
9. **Audit**
	1. The Processor hereby grants HES the right to engage an independent third party to carry out an audit as to compliance with the provisions of this Data Processing Agreement, subject to such third party being bound by a duty of confidentiality. Such an audit shall be carried out only after HES has requested, assessed and raised reasonable issues with the Processor relating to any similar audit reports in the Processor's possession that would justify an audit initiated by HES. Such an audit is justified where any similar audit reports in the possession of the Processor show insufficient, or indeed no indication of compliance by the Processor with this Data Processing Agreement. The above process does not apply if the audit is initiated by HES pursuant to an investigation of HES by an authority.
	2. The Processor shall cooperate with an audit and make available as soon as possible all information reasonably relevant to the audit (including supporting data such as system logs) and employees.
	3. The findings from the audit will be assessed by the Processor and may, if the Processor sees fit, and in a manner it sees fit, be forwarded by the Processor.
10. **Liability and indemnity**
	1. The Processor is liable to HES for loss resulting from non-compliance with this Data Processing Agreement, or as a result of a breach of any statutory obligation, or unlawful act, or otherwise.
	2. The Processor is liable to HES for loss resulting from the acts of a Sub-processor used by the Processor, as described in Article 4.
	3. The Processor will indemnify HES from all damages and costs, including but not limited to penalties and/or sanctions imposed by a competent authority and against claims of data subjects and third parties, in so far as the relevant damages, penalties and/or claims can be attributed to the Processor and/or ensue from the Processor failing to perform its obligations under this Data Processing Agreement and/or under the applicable data protection legislation in a timely, correct and complete manner, including but not limited to taking appropriate technical and organisational security measures.
11. **Duration and termination**
	1. This Data Processing Agreement shall commence as from the date on which it is signed.
	2. This Data Processing Agreement is concluded for the fixed term referred to in the Framework Agreement between the Parties and, in default of such a fixed term, in any event for the duration of the collaboration between the Parties.
	3. As soon as this Data Processing Agreement ends, for whatever reason and by whatever method, the Processor shall either return to HES, or delete and/or destroy, all Personal Data in its possession, both original documents and copies thereof, except for Personal Data that the Processor is required to keep in compliance with any statutory obligation in this regard. In such a case, the Processor shall inform HES what Personal Data it will keep stored and for what period of storage.
	4. In the event of any conflict between the provisions of this Data Processing Agreement and the provisions of the Agreement, the provisions of this Data Processing Agreement will prevail over the provisions of the Agreement, unless the parties explicitly deviate here from.
12. **Applicable law and jurisdiction**
	1. This Data Processing Agreement, including negotiations preceding this Data Processing Agreement and the implementation hereof, are governed by Dutch law.
	2. Any disputes arising between the Parties in connection with this Data Processing Agreement shall be brought before the competent court for the district of Rotterdam.

|  |  |
| --- | --- |
| For HES | For the Processor |
|  |  |
| Name: | Name: |
| Title: | Title: |
| City/town: | City/town: |
| Date: | Date: |

annex 1
Description of processing activities

* + 1. **Subject and duration of the processing**

[*Please insert what the processing pertains to and the period.*][[2]](#footnote-2)

* + 1. **Nature and purpose of the processing**

[*Please insert the purposes of the processing.*][[3]](#footnote-3)

* + 1. **Types of Personal Data**

[*Please insert the type of data involved.*][[4]](#footnote-4)

* + 1. **Categories of Data Subjects**

[*Please insert the person/entity whose data are involved, for example employees, customers, suppliers, etc.*][[5]](#footnote-5)

1. **Note:** The GDPR requires that the contract sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects. Hence, if the processor states that it is disproportionate (and pointless) to seek to populate the processing description: insist – this is an express GDPR requirement. [↑](#footnote-ref-1)
2. For example: processing of personal data within the framework of payroll accounting for the duration of the agreement between HES and [service provider] [↑](#footnote-ref-2)
3. For example: managing and keeping payroll accounting records, paying out salaries to HES employees, paying contributions and taxes, recording payments of income tax and social security contributions, etc. [↑](#footnote-ref-3)
4. For example: name and address data, bank account numbers, salary slip, Citizen Service Numbers, etc. [↑](#footnote-ref-4)
5. For example: HES employees, hired freelancers/self-employed workers without employees, etc. [↑](#footnote-ref-5)