**DATA EXCHANGE AGREEMENT**

**THE PARTIES:**

1. Data controller **DELFT UNIVERSITY OF TECHNOLOGY**, with its registered office at 2628 CN DELFT, Stevinweg 1, legally represented by [name, position], hereinafter referred to as: “**TU Delft**”,

and

2. Data controller **[name]**, with its registered office at [postal code] [town/city] at [address], hereby legally represented by [name, position], hereinafter referred to as:
“**[Name]**”

Hereinafter referred to individually as: “**the Party**”, and jointly as: “**the Parties**”

**Whereas:**

* On [date], the Parties signed a Contract concerning [subject of the contract] (hereinafter referred to as the Contract). In the execution of this Contract, Personal Data are exchanged between the Parties, for the purpose of [description of purpose(s) of the data exchange].
* Within the framework of the Contract, each of the Parties are considered to be a Data Controller, within the meaning of the GDPR, for their own data processing.
* In the performance of the Contract, TU Delft provides Personal Data to [name], for which TU Delft is the Data Controller, and for which [name] will be the Data Controller once the Personal Data has been provided. There is no question of a joint administration, nor of joint processing purposes.
* The Parties wish to lay down their rights and obligations concerning the exchange of Personal Data of the Data Subjects in this Data Exchange Agreement, so that the Exchange of data is in accordance with the GDPR and other Relevant Legislation concerning the Processing of Personal Data.

**HEREBY AGREE AS FOLLOWS:**

**Article 1 Definitions**In this Data Exchange Agreement, the terms written with a capital letter have the meaning given in this article. If a term written with a capital letter does not appear in this article, the term is assigned the meaning of the definition given in Article 4 of the GDPR.

The following definitions apply in this Data Exchange Agreement:

* 1. **GDPR**: Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 concerning the protection of natural persons in connection with the Processing of Personal Data and in connection with the free flow of such data, and the withdrawal of Directive 95/46/EC (General Data Protection Regulation).
	2. **Data Subjects**: the identified or identifiable natural persons whose Personal Data are processed in the implementation of the Contract and the Data Exchange Agreement.
	3. **Appendix/Appendices**: appendix/appendices to this Data Exchange Agreement that form(s) an integral part of this Data Exchange Agreement.
	4. **Data Breach**: a breach of security that accidentally or unlawfully leads to the destruction or loss of or change to, or to the unauthorised supplying of, or unauthorised access to, transmitted, stored or otherwise processed Personal Data within the framework of the Contract and the Data Exchange Agreement.
	5. **Data Exchange Agreement**: this agreement including any Appendices.
	6. **Contract:** the contract signed between the Parties on the grounds of which the Parties exchange Personal Data with each other.
	7. **Exchange**: the Processing of Personal Data in which [name] receives Personal Data from TU Delft to process for their own purposes.

**Article 2 Subject of the agreement**

* 1. This Data Exchange Agreement concerns the Exchange and Processing of Personal Data as described by the Parties in Appendix A.
	2. In the event of any conflict between this Data Exchange Agreement and the Contract, this Data Exchange Agreement prevails. This means that the Contract and any other conditions agreed may in no way prejudice the rights and obligations pursuant to this Data Exchange Agreement.
	3. The Parties each ensure that their employees abide by the obligations of the GDPR and this Data Exchange Agreement, if and in so far as they are in any way involved in the Processing of Personal Data.
	4. If a Party receives requests from Data Subjects for information, consultation, rectification or deletion of their Personal Data, the Party will process such requests to the extent that they cover Processing for which the Party is Data Controller. If the request concerns Processing for which the other Party is Data Controller, the Party will immediately notify the Data Subject and forward the request to be dealt with to the other Party. The Parties will provide full cooperation required to answer requests from Data Subjects.

**Article 3 Conclusion, duration and termination of the Data Exchange Agreement**

* 1. The provisions concerning duration and termination of the Contract are deemed to be the provisions concerning duration and termination of the Data Exchange Agreement. When the Contract ends, the Data Exchange Agreement ends by operation of law, and vice versa.
	2. Within [one (1) month] after the end of the Contract, [name] will [destroy/return] all Personal Data and/or [name] will transfer them to TU Delft and/or another party to be designated by TU Delft. All existing (other) copies of Personal Data, whether or not held by persons or legal persons deployed by [name], including but not limited to employees and/or Processors, will be demonstrably and permanently removed, unless retention of the Personal Data is obligatory under EU Member State or Union law. In the event that Personal Data is stored in a back-up of [name], this will be destroyed or overwritten at the first possible opportunity, but no later than three (3) months after the termination of the Contract.
	3. Obligations that by nature are intended to continue after the termination of the Data Exchange Agreement, will continue to apply after the termination of the Data Exchange Agreement. Among these obligations are those that ensue from the stipulations concerning confidentiality, transfer and destruction, liability and applicable law.

**Article 4 Obligations of the Parties**

* 1. The Parties declare that they will process Personal Data in a proper, careful and transparent manner and in accordance with the GDPR and other applicable legislation concerning the Processing of Personal Data.
	2. Parties agree that the Personal Data they exchange will be Processed in accordance with the following agreements:
* The Personal Data will only be Processed on the basis of previously formulated purposes in Appendix A and will not be further Processed in any way that is incompatible with this.
* The Parties will take the necessary measures to ensure that the Personal Data is correct and accurate, in view of the purposes for which it is being collected and subsequently Processed.
* The Parties will take appropriate technical and organisational security measures needed to ensure and secure the availability, integrity and confidentiality of the Personal Data with regard to the Exchange, and to secure it against loss or unlawful Processing.
* The Parties guarantee that the content of the Processing and the use of Personal Data are not unlawful and do not infringe any rights of third parties.
	1. In accordance with Articles 13 and 14 of the GDPR, every Party must inform the Data Subjects about the Processing of Personal Data for which the Party is responsible in the performance of the Contract. [Name] will provide TU Delft with all the information needed to enable TU Delft to fulfil its duty to inform.

**Article 5 Access to Personal Data**

* 1. The Parties will restrict access to Personal Data by employees, Processors, third parties and other recipients of Personal Data to the necessary minimum.
	2. If a Party outsources the (further) Processing (or parts thereof) of the Personal Data in question to a Processor, the Party is responsible to ensure that the Processor Processes the Personal Data in a proper and careful manner and in accordance with the applicable legislation concerning the Processing of Personal Data. Agreements concerning the Processing of Personal Data by a Processor will be set down in a Processors’ Agreement in accordance with Article 28 of the GDPR.
	3. Parties are only allowed to Process the Personal Data or outsource the Processing in countries outside the European Economic Area (EEA), if the applicable legislation concerning the Processing and transfer of Personal data is taken into account. If applicable, information about the transfer of Personal Data to countries outside the EEA and the appropriate safeguards is described in Appendix A.

**Article 6 Security**

The Parties will secure the Processing of Personal Data in accordance with the obligations laid down by or pursuant to the GDPR and by or pursuant to other special legislation concerning the Processing of Personal Data. The Parties also declare that they will keep to the agreements as described in Appendix B.

**Article 7 Data Breach**

If an incident or Data Breach that involves the Personal Data of Data Subjects takes place at [name], [name] will inform TU Delft of this as soon as possible via the contacts mentioned in Appendix C.

**Article 8 Final provisions**

* 1. If one or more of the stipulations of the Data Exchange Agreement prove to be not legally valid, the Data Exchange Agreement will continue to apply in all other respects. In that case, the Parties will consult together about the stipulations that are not legally valid, in order to come to a replacement that is legally valid and that is as close in meaning as possible to the stipulations they replace.
	2. In all cases not provided for in this Data Exchange Agreement, the Parties will decide in mutual agreement.
	3. Any deviations from or changes and additions to this Data Exchange Agreement are only valid if they have been agreed in writing by both Parties.
	4. The Data Exchange Agreement and its implementation are governed by Dutch law.
	5. Disputes between the Parties concerning the implementation of this Data Exchange Agreement will be put to the Court of the Hague, located in the Hague.

AGREED AND SIGNED:

|  |  |  |
| --- | --- | --- |
| Delft University of Technology  |  | [Name]  |
| Name of representative:Position:Date: |  | Name of representative:Position:Date: |

**Appendix A. Exchange of Personal Data**

1. **Description, purpose and legal basis for Exchange/Processing**
* TU Delft provides the Personal Data stated below, concerning the following Data Subject(s), to [name]:
[list of Data Subject(s) and the Personal Data in question per category of Data Subject];
* Provision of Personal Data takes place [once only/continuously] [between/on] [start date of provision] and [end date of provision];
* TU Delft provides said Personal Data on the following legal basis: [legal basis as referred to in Article 6 of the GDPR]
* The Personal Data provided by [name] is Processed for the following purposes only: [description of purpose(s)] on the following legal basis [basis as referred to in Article 6 of the GDPR].
1. **Retention period for Personal Data**

The Personal Data processed by [name] within the framework of the Processing described above is held by [name] for a period of [retention period]. At the end of this period, [name] ensures that the Personal Data is destroyed within one (1) month.

All existing (other) copies of Personal Data, whether or not held by persons or legal persons deployed by [name], including but not limited to employees and/or Processors, will be demonstrably and permanently removed, unless retention of the Personal Data is obligatory under EU Member State or Union law. In the event that Personal Data is stored in a back-up of [name], these will be destroyed or overwritten at the first possible opportunity, but no later than three (3) months after the termination of aforementioned retention period.

Upon the termination of the Contract and with it this Data Exchange Agreement, the provisions in Article 3.2 of the Data Exchange Agreement shall apply.

1. **Location of Personal Data Processing**

Parties and their (sub)Processors only Process the Personal Data within the European Economic Area (EEA).

Or (remove the text that is not applicable)

One or both Parties (partly) Process Personal Data in countries outside the EEA. In the table hereunder Parties describe which Party transfers and/or Processes Personal Data to which country outside the EEA. They also describe which safeguard (mechanism of data transfer) as required by the GDPR is in place to ensure an adequate level of protection of the Personal Data.

|  |  |  |  |
| --- | --- | --- | --- |
| **Party that transfers Personal Data to a country outside the EEA** | **Description of the transfer** | **Name of Party/third party that receives the Personal Data outside the EEA + country**  | **Mechanism of data transfer\*** |
| TU Delft |  |  |  |
| [Name] |  |  |  |

\* *The first step is to check of the European Commission has taken a so called adequacy decision concerning the applicable country. This can be checked on the* [*website of the European Commission*](https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en)*. If there is no adequacy decision for the concerning country, in most cases the only appropriate mechanism of data transfer is the signing of Standard Contractual Clauses (SCC) by the Parties and if necessary additional safety measures.
The template of SCC (in this case module 1) can be found on the* [*privacy webpage of TU Delft*](https://www.tudelft.nl/en/privacy-security/privacy/data-processing-agreement)*. The signed SCC are an appendix to this Data Exchange Agreement.
If case of questions or need for advice you can contact the Privacy team via* *privacy-tud@tudelft.nl/**.*

**Appendix B. Personal Data Exchange security**

**Manner of Exchange**The Exchange of Personal Data between the Parties, as described in Appendix A, takes place in the following manner(s): [description of manner of exchange].

*Examples\*:*

* *The Exchange is carried out using the following [name of software/application].*
* *The Exchange is carried out using import files that are shared with [position of Name], using [name of application].*

**Security**
For the Exchange, the Parties take the following technical and organisational measures as referred to in Article 3.2: [description of technical and organisational measures].

*Examples\*:*

* *The files containing Personal Data are provided with end-to-end encryption, in which the password is sent to the member of staff of [name] via text message or telephone.*
* *The files containing Personal Data are exchanged using the following secure link between the systems: [description of secure link].*

\* The examples only serve as illustration and must be removed before this appendix is completed. Whether the stated manners of exchange and security offer sufficient protection depends on the type of Personal Data and the scope of the Exchange. For advice, please contact the Privacy team via privacy-tud@tudelft.nl.

**Appendix C. Contacts**

|  |  |  |
| --- | --- | --- |
| Organisation | Position of contact | Contact details: |
| TU Delft | [Position of contact from department/faculty] | [Contact details] |
| [Position/department e.g. Service Desk] | [Contact details] |
| [Name] | [Position of contact] | [Contact details] |
| [Position/department e.g. Service Desk] | [Contact details] |