

Preface

This Model Joint Controllership Agreement is designed to serve as a model agreement for parties participating in a collaborative partnership, with the various parties acting as joint controllers within the meaning of the GDPR.

In this model agreement, it is assumed that the collaborative partnership is comprised of four participating parties. Naturally, the agreement can also be used if the partnership is comprised of more or fewer than four parties. Furthermore, this model agreement is based on the assumption that the parties have already concluded a main agreement in which they have set out their commitments in relation to the collaborative partnership. The Model Joint Controllership Agreement is used to enter into additional commitments relating to the processing of personal data.

JOINT CONTROLLERSHIP AGREEMENT

Date: [X]

The Parties:

[Bedrijf X], having its registered seat at [Adres] in [Plaats] and registered with the Chamber of Commerce's Trade Register under company number [nummer], here duly represented by [Vertegenwoordiger], hereinafter referred to as **["X"]**,

and

[Bedrijf X], having its registered seat at [Adres] in [Plaats] and registered with the Chamber of Commerce's Trade Register under company number [nummer], here duly represented by [Vertegenwoordiger], hereinafter referred to as **["X"]**,

and

[Bedrijf X], having its registered seat at [Adres] in [Plaats] and registered with the Chamber of Commerce's Trade Register under company number [nummer], here duly represented by [Vertegenwoordiger], hereinafter referred to as **["X"]**,

and

[Bedrijf X], having its registered seat at [Adres] in [Plaats] and registered with the Chamber of Commerce's Trade Register under company number [nummer], here duly represented by [Vertegenwoordiger], hereinafter referred to as **["X"]**,

hereinafter collectively referred to as the "Parties" and individually referred to as a "Party",

Whereas:

- The Parties wish to collaborate on the project outlined in greater detail in Schedule 1;
- The Parties concluded a Main Agreement on <DATUM> or wish to collectively conclude such an agreement along with this Agreement with the reference <KENMERK VAN DE HOOFDOVEREENKOMST> relating to <ONDERWERP VAN DE HOOFDOVEREENKOMST>;
- This collaborative partnership shall involve the processing and exchange of Personal Data;
- The Parties shall jointly determine the purpose of the Data Processing Operations and the resources used therein, and shall therefore be Joint Controllers within the meaning of Article 26 of the GDPR, rather than serving as the Data Processors of each other's data;
- To ensure that the Personal Data are processed in a careful manner, the Parties wish to enter into commitments on the Processing of Personal Data and the various Parties' respective responsibilities vis-à-vis each other.

Now, therefore, the Parties have agreed as follows:

Clause 1. Definitions

In this Agreement, the capitalised words shall have the meanings ascribed to them in the General Data Protection Regulation. All other capitalised words shall have the meanings ascribed to them in this clause. All references in this Agreement to the singular shall include the plural where applicable, and vice versa, unless explicitly stated otherwise, or unless it is obvious from the context that this rule does not apply.

- 1.1 **Agreement:** the present Agreement, including the Schedules, within the meaning of **Article 26** of the GDPR.
- 1.2 **Collaborative Partnership:** the collaborative partnership between the Parties based on the Main Agreement, as outlined in Schedule 1, involving the exchange of Personal Data.
- 1.3 **Employee:** the employees and other persons contracted by the Parties whose work duties come under the relevant Party's responsibility and who are contracted by said Party for the performance of the Agreement.
- 1.4 **GDPR:** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.5 **In writing:** on paper or electronically, within the meaning of Article 6:227a of the Dutch Civil Code.
- 1.6 **Main Agreement:** the main agreement concluded by the Parties in relation to their Collaborative Partnership, on the basis of which the Parties are Joint Controllers.
- 1.7 **Schedule:** an appendix to this Agreement, which constitutes an integral part of the Agreement.
- 1.8 **Special categories of Personal Data:** Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation within the meaning of Article 9 of the GDPR. This also includes personal data relating to criminal convictions and offences within the meaning of Article 10 of the GDPR and national identification numbers.

Clause 2. Subject of the Agreement

- 2.1 The Agreement constitutes an addition to the Main Agreement and replaces any agreements previously concluded by the Parties relating to the Processing of Personal Data. In the event of inconsistency or conflict, the provisions of the Agreement shall prevail.
- 2.2 The Agreement is a Joint Controllership Agreement in which the Parties shall set out their respective responsibilities in relation to the Processing of Personal Data as outlined in Schedule 3. The Parties shall serve as the Joint Controllers of the Data Processing Operations outlined in Schedule 3.
- 2.3 The provisions of the Agreement shall apply to all Data Processing Operations performed to give effect to the Collaborative Partnership as outlined in greater detail in the Main Agreement. The Parties shall notify each other at once in the event that one of the Parties has grounds to assume that it will no longer be able to meet its obligations under the Agreement.

Clause 3. The Parties' obligations

- 3.1. The Parties declare to each other that they shall process the Personal Data in a proper, careful, and transparent manner, in accordance with Schedule 3 of this Agreement and applicable laws and regulations on the Processing of Personal Data, particularly (but not exclusively) with regard to the GDPR and the Dutch Telecommunications Act.
- 3.2. The Parties commit to processing the Personal Data exclusively for the purpose for which the Personal Data were collected, unless the Parties, following a prior mutual consultation on the subject, have agreed in writing that the Personal Data can also be used for purposes closely related to the original purpose.
- 3.3. The Parties shall not collect more Personal Data than strictly necessary for the relevant purpose.
- 3.4. If, due to its nature, size, context and purposes, a Data Processing Operation may pose a great risk to the rights and freedoms of natural persons, the Parties shall perform a Data Protection Impact Assessment for the Data Processing Operation concerned, in which case such a Data Protection Impact Assessment will be incorporated into a Schedule to this Agreement.
- 3.5. Each Party shall be separately responsible for recording the Data Processing Operations in a suitable register of data processing activities.
- 3.6. The obligations arising from this Agreement shall also apply to those who process Personal Data under the Parties' authority, such as the Parties' Employees and the Data Processors they have contracted.
- 3.7. The Parties shall communicate in a clear and readily understood manner to whom Data Subjects can turn to exercise their rights, in accordance with the division of tasks included in Schedule 2.
- 3.8. Schedule 1 shall include a specification of the Collaborative Partnership between the Parties as agreed between the Parties in the Main Agreement, as well as a general description of the Collaborative Partnership. Among other things, the schedule shall include information on the following:
 - The purpose and nature of the Collaborative Partnership;
 - The application(s) that will be used in the partnership;
 - The supplier(s) of the application(s).
- 3.9. Schedule 2 shall include a specification of the responsibilities the Parties shall have vis-à-vis each other, as well as an explanation of how the tasks related to the careful Processing of Personal Data that will be performed as part of the Collaborative Partnership will be distributed among the Parties. Among other things, Schedule 2 must contain information on the following aspects:
 - Which Party/Parties shall be responsible for concluding Data Processing Agreements with Data Processors, and when said agreements must be concluded;
 - Which Party/Parties shall be responsible for the technical and organisational measures to be implemented in order to protect the Personal Data processed as part of the Collaborative Partnership;
 - Which Party/Parties shall be responsible for enabling the Data Subjects to exercise their rights, including the duty to provide the Data Subjects with information on how their Data will be used.
- 3.10. Appendix 3 shall include a specification of the nature of the Data Processing Operation(s). Among other things, Appendix 3 must contain information on the following aspects:

- A description of the Data Processing Operation(s) to be performed;
- The purposes of the Data Processing Operation(s);
- The various types of Data Subjects;
- The various types of Personal Data;
- The retention periods;
- The types of Employees who will have access to the Personal Data;
- The names of the Data Processors that have been contracted by the Parties to perform the Data Processing Operation(s);
- Where relevant, whether Data will be transmitted to countries outside the EEA;
- The contact details of the Parties in the event of a Data Breach in connection with Personal Data.

3.11. Schedule 4 shall include a specification of the technical and organisational security measures implemented by the Parties.

Clause 4. Access to Personal Data

- 4.1 The Parties shall reduce Employees', Data Processors', Third Parties' and other Recipients' access to Personal Data to an absolute minimum, on the basis of necessity.
- 4.2 The Parties have identified the categories of Employees who will need access to the Personal Data to perform their duties under the Collaborative Partnership in Schedule 3.
- 4.3 The Parties must not engage other persons or organisations to help them process the Personal Data without prior Written permission from the other Parties.
- 4.4 If a Party chooses to outsource the (further) Processing of the Personal Data (or certain sections thereof) to a Data Processor in accordance with Clause 4.3, it shall ensure that the Data Processor processes the Personal Data in a proper and careful manner that complies with applicable laws and regulations regarding the Processing of Personal Data. Agreements regarding the processing of Personal Data by a Data Processor shall be laid down in an appropriate Data Processing Agreement within the meaning of Article 28 of the GDPR. Where possible, the Parties shall use the latest version of SURF's Model Processor Agreement for this. The Data Processors engaged by the Parties shall be named in Schedule 3.
- 4.5 All Parties have the right to inspect the Data Processing Agreement(s) referred to in Clause 4.4 at all times.
- 4.6 The Parties are allowed to have Personal Data processed by other persons or organisations located outside the European Economic Area in accordance with Clauses 4.3 to 4.5 (inclusive), on the condition that said persons or organisations comply with applicable laws and regulations regarding the Processing of Personal Data. The manner in which the Parties will outsource the processing activities shall be included in Schedule 3.

Clause 5. Non-disclosure and confidentiality

- 5.1. All Personal Data are considered confidential information and must therefore be treated as confidential information. The Parties shall impose this duty of confidentiality on all the natural persons and legal entities they engage to process Personal Data, including but not limited to Employees, Data Processors, Third Parties and other Recipients of Personal Data.
- 5.2. The Parties shall keep all Personal Data secret and shall not disclose them to internal or external parties in any way whatsoever, except in cases where:

- (i) Disclosure and/or transmission of the Personal Data is necessary for the performance of the Main Agreement or Agreement;
- (ii) The Parties are required to disclose, transmit and/or transfer the Personal Data due to mandatory legal provisions or a court order issued by a competent court or on the orders of some other government agency having authority over the Parties, although the Parties shall first notify the other Parties of this requirement; or
- (iii) The Personal Data are disclosed and/or transmitted with the other Parties' prior Written consent.

Clause 6. Liability

- 6.1 The Parties shall only be liable vis-à-vis each other in the event that a Party is demonstrably in breach of one or more of its obligations under this Agreement, and shall only be liable for direct damage that will be reimbursed and paid out by the insurance company, subject to a maximum insurance coverage amount of EUR [X] per annum. The maximum amount for which the Party shall be liable as referred to in the previous sentence shall apply to individual events, with a series of interrelated events being regarded as one single event. If, for whatever reason, the insurance company chooses not to pay out on a claim, the Party's liability shall be limited to EUR [X] per event or series of interrelated events.
- 6.2 The exclusions and restrictions set out in this article shall lapse if and insofar as the damage was caused by an intentional act or wilful misconduct on the part of the Party/Parties causing the damage and/or its/their managers.
- 6.3 A Party that is demonstrably in breach of one of its obligations under the Agreement, thus causing the other Parties to be held liable by a third party for any damage, costs or interest payments it has incurred, shall indemnify the other Parties against the claims brought by the third party and reimburse any expenses the other Parties may incur, unless said Party is able to prove that the damage was caused by an intentional act or gross negligence on the part of the other Parties.

Clause 7. Data Breach

- 7.1 In the event of a Data Breach, the Party on whose premises the Data Breach occurred shall be responsible for notifying the other Parties of the Breach. The Parties shall inform each other without delay of the information included in the latest data breach form issued by the Dutch Data Protection Authority, which can be found on the Dutch Data Protection Authority's Data Breach Reporting Site.
- 7.2 If the Parties are notified of a Data Breach as referred to in Clause 7.1, they shall consult each other on the consequences and potential consequences for all Parties.
- 7.3 The Parties shall notify each other of the latest developments regarding the Data Breach.
- 7.4 Each Party shall be separately responsible for reporting a Data Breach to the Supervisory Authority and/or affected Data Subjects if a Data Breach occurred under its responsibility. If any costs are incurred in the attempt to resolve the breach situation and ensure that it will not occur again in the future, said costs shall be borne by the Party on whose premises the Data Breach occurred, although the Parties may consider sharing the costs if the solution will benefit all participating Parties.
- 7.5 Each Party is separately responsible for recording Data Breaches in a register.

Clause 8. Term and termination

- 8.1. This Agreement shall enter into force after it has been signed by the Parties. The term of the Agreement shall be the same as the term of the Main Agreement. This Agreement cannot be terminated independently from the Main Agreement. If the Main Agreement is terminated, the Agreement shall also become void by operation of law, and vice versa.
- 8.2. This Agreement can only be amended by the Parties following a consultation of all participating Parties, and provided that all participating Parties have agreed to the proposed amendment. If applicable law and regulations are amended, the Parties shall seek to amend this Agreement accordingly.
- 8.3. Once the term of the Agreement and/or the statutory retention periods has/have expired, the Parties shall ensure jointly that the Personal Data are destroyed.
- 8.4. Those obligations under the Agreement that, by their nature, must continue to be fulfilled after the termination of the Agreement, must continue to be fulfilled after the termination of the Agreement.

Clause 9. Other provisions

- 9.1. This Agreement and its performance are governed by the law of the Netherlands.
- 9.2. If any disputes relating to the Agreement should arise between the Parties, they must be brought before the court that is competent to rule on them pursuant to the Main Contract.
- 9.3. In the event that one or more provisions of the Agreement should prove to be legally invalid, the validity of the remaining provisions of the Agreement shall be unaffected. In such cases, the Parties shall consult each other on the provisions that are not legally valid so as to be able to come to an Agreement that *is* legally valid and obeys the letter and spirit of the provision that requires amendment.

Agreed and signed,

[Bedrijf X]
 ____/____/_____
date

name

signature

[Bedrijf X]
 ____/____/_____
date

name

signature

[Bedrijf X]
 ____/____/_____
date

name

[Bedrijf X]
 ____/____/_____
date

name

signature

signature

LIST OF SCHEDULES

- Schedule 1: Specification of the Collaborative Partnership between the Parties
- Schedule 2: Specification of the Parties' responsibilities vis-à-vis each other and the division of tasks
- Schedule 3: Specification of the Data Processing Operation(s) to be performed
- Schedule 4: Specification of the technical and organisational security measures implemented by the Parties

SCHEDULE 1: THE COLLABORATIVE PARTNERSHIP BETWEEN THE PARTIES

Description of the nature of the collaborative partnership

This schedule provides a description of the collaborative partnership between the Parties, which necessitates the drawing-up of this Joint Controllership Agreement. Be sure to include the following aspects:

- A description of the nature of the Collaborative Partnership, as well as its purpose(s). For instance, does this partnership concern a project, joint use of an application, etc.?*
- The commencement date of the collaboration.*
- The applications that will be used as part of the partnership (if any).*
- The suppliers of these applications.*

Application(s)

Application name		
Application supplier		

SCHEDULE 2: THE PARTIES' RESPONSIBILITIES VIS-À-VIS EACH OTHER AND THE DIVISION OF TASKS

This schedule provides a description of the way in which the Parties have divided their tasks and responsibilities between them. Article 26 of the GDPR stipulates that the joint controllers must determine their respective responsibilities for fulfilling the obligations under the Regulation in a transparent manner, by means of an Agreement between them.

It is vital that the joint controllers' respective responsibilities be defined in as much detail as possible. At the very least, this schedule should touch on the following aspects:

A) Data Processing Agreements

Which Party/Parties is/are responsible for concluding Data Processing Agreements with Data Processors as laid down in Schedule 1 (Article 28 of the GDPR)?

B) Technical and organisational security measures

Which Party/Parties is/are responsible for implementing appropriate technical and organisational security measures (Article 32 of the GDPR)?

C) Rights of Data Subjects

Which Party/Parties will ensure that Data Subjects are guaranteed the opportunity to exercise their rights (Articles 12-23 of the GDPR)? The Parties may divide certain rights among themselves. In such cases, they must specify who is responsible for which of the Data Subjects' rights. It must be clear to Data Subjects to whom they can direct a request to exercise a particular right.

SCHEDULE 3: SPECIFICATION OF THE DATA PROCESSING OPERATION(S)

Description of the nature of the Data Processing Operation

Purposes of the Data Processing Operation

Categories of Data Subjects

(Categories of) Personal Data

Retention period for the Personal Data, or the criteria used to establish the retention period

Categories of Employees

Party	Categories of Parties' Employees (function roles/function groups) who perform Data Processing Operations	(Category of) Personal Data processed by Employees	Type of Data Processing Operation
[Bedrijf X]			
[Bedrijf X]			
[Bedrijf X]			
[Bedrijf X]			

Data Processors

The Parties have authorised the engagement of the following Data Processors for the Data Processing Operations to be performed.

Party	Data Processors engaged by this Party	Country where Data will be processed	Location of Data Processor	Engaged by	Data Processing Agreement	Authorised by other Parties
[Bedrijf X]						
[Bedrijf X]						
[Bedrijf X]						
[Bedrijf X]						

Transmission

The Parties have authorised the transmission of data to the third countries or international organisations listed below.

Party	Description of the Data to be transmitted	Entity transmitting the Personal Data + country	Entity receiving the Personal Data + country	Mechanism of Data transmission
[Bedrijf X]				
[Bedrijf X]				
[Bedrijf X]				
[Bedrijf X]				

Contact details

Contact details in the event of Data Breach	Name	Job title	E-mail address	Phone number
[Bedrijf X]				
[Bedrijf X]				

[Bedrijf X]				
[Bedrijf X]				

SCHEDULE 4: SPECIFICATION OF TECHNICAL AND ORGANISATIONAL SECURITY MEASURES IMPLEMENTED

The Parties will implement the technical and organisational security measures listed in this schedule.

1. Technical security measures

Party	Technical security measures implemented
[Bedrijf X]	
[Bedrijf X]	
[Bedrijf X]	
[Bedrijf X]	

2. Organisational security measures: roles and rights model.

Party	Organisational security measures implemented
[Bedrijf X]	
[Bedrijf X]	
[Bedrijf X]	
[Bedrijf X]	