**Data Protection Agreement**

of [■] in the [■] Case No. [■]

by and between

**[Arbitrator 1]**

and

**[Arbitrator 2]**

and

**[Arbitrator 3]**

 (each individually an **Arbitrator** or collectively the **Arbitral Tribunal**)

and

**[Party 1]**

and

**[Party 2]**

(individually an **Arbitration Party** or collectively the **Arbitration Parties**)

and

**[Counsel 1]**

and

**[Counsel 2]**

(individually or collectively the **Arbitration Counsel**)

(the Arbitral Tribunal, the Arbitration Parties, the Arbitration Counsel
individually **Contracting Party** or collectively the **Contracting Parties**)

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Preamble

1. The Contracting Parties are participants in the arbitration proceeding [■] Case No. [■] commenced by **[Party 1]** against **[Party 2]** through a request for arbitration submitted to the Secretariat of the [■] (the **Arbitral Institution**) on [■] (the **Arbitration**).
2. In the context of the Arbitration, the Contracting Parties process personal data as defined by Art. 4 No. 1 and 2 of the 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 (General Data Protection Regulation, **GDPR**) for the purpose of resolving the dispute that is the basis for the Arbitration (the **Dispute**). Unless otherwise defined, terms in this agreement shall have the same meaning as those defined by the GDPR.
3. The Contracting Parties recognize that the GDPR as well as national laws, regulations, statutes and decisions, which regulate the processing of personal data (**Data Protection Laws**), may require some or all Contracting Parties to comply with certain requirements. For such purpose, the Contracting Parties determine their respective responsibilities concerning the processing of personal data that involves two or more Contracting Parties in the context of this Arbitration.

In light of the foregoing, the Contracting Parties agree as follows:

# Scope

This Data Protection Agreement (the **Agreement**) governs the processing of personal data in the context of the process activities defined in Annex A to this Agreement, and applies only *inter partes* and vis-à-vis data protection supervisory authorities. It does not apply to any other processing of personal data by the Contracting Parties outside the scope of Annex A.

The provisions herein apply irrespective of whether a Contracting Party itself is subject to the GDPR or other Data Protection Laws. Nothing in this Agreement shall constitute an acknowledgement by any Contracting Party that the GDPR or certain Data Protection Laws apply to it.

In no way shall this Agreement limit, extend or otherwise change (a) the mandate or the powers of the Arbitral Tribunal under the agreement to arbitrate of the Arbitration Parties, or be considered part thereof, (b) the relationship between each Arbitration Party and its Arbitration Counsel or (c) the relationship between the Contracting Parties beyond the scope of this Agreement.

# General Allocation of Responsibility

Insofar as a Contracting Party is a controller of a processing activity defined in Annex A, it shall be responsible for its compliance with regard to the GDPR and any other Data Protection Laws applicable to such activity where – pursuant to the procedure and rules of the Arbitration and orders of the Arbitral Tribunal – it is to process personal data for such processing activity. In particular, it shall take all necessary technical and organizational measures to protect the rights of data subjects, in particular pursuant to articles 12 through 22 GDPR (including applicable exemptions and other provisions under EEA member state law), and equivalent provisions under other Data Protection Laws applicable to the processing activities at issue.

# Obligations of Each Contracting Party

## Confidentiality regarding Personal Data

Each Arbitration Party and its Arbitration Counsel (each a **Receiving Party**) shall keep confidential any personal data that the other Arbitration Party, the Arbitral Tribunal or any individual appearing in this Arbitration (each a **Disclosing Party**) discloses (i) for the purpose of being included in the Arbitral Tribunal's file (the **Arbitral File**), (ii) to be considered for inclusion in the Arbitral File or (iii) otherwise to be used for a processing activity defined in Annex A (collectively the **Matter Data**).

This obligation shall not apply to (a) any Matter Data that is publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) any Matter Data that is discovered or created by the Receiving Party before disclosure by the Disclosing Party; (c) any Matter Data that is received by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party’s representatives; (d) any Matter Data that is disclosed by the Receiving Party with Disclosing Party’s prior written approval; (e) any disclosure by the Receiving Party required under applicable law, in which case it shall, insofar permitted, inform the Disclosing Party and reasonably enable it to defend against such obligation before complying with it; (f) any disclosure by the Receiving Party to any Contracting Party or otherwise as permitted pursuant to Section 3.6; (g) any other disclosure by the Receiving Party necessary for the establishment, exercise or defense of legal claims in connection with this Arbitration, including any appeal or enforcement or other auxiliary actions in connection with the Arbitration through state courts.

The Receiving Party shall process the Matter Data for the sole purpose of conducting the Arbitration, including any appeal and enforcement actions or other auxiliary actions in connection with the Arbitration through state courts (the **Purpose**), except where provided otherwise by this Agreement.

The obligations of this Section shall apply *mutatis mutandis* to the Arbitral Tribunal insofar it receives any Matter Data (i) for inclusion in the Arbitral File, (ii) to be considered for its inclusion in the Arbitral File, or (i) in the context of the other processing activities pursuant to Annex A.

The confidentiality obligations of this Agreement are without prejudice to any other confidentiality obligations that may exist between Contracting Parties.

## Legal Basis for Processing

Where possible, the Contracting Parties shall with regard to the GDPR not seek consent as a legal basis to process Matter Data or other personal data of individuals, as this may not be appropriate for use of such personal data in an arbitration. Instead, having considered their legitimate interest in being able to pursue the Arbitration on the basis of the Matter Data and the safeguards provided by this Agreement, the Contracting Parties agree that the Matter Data shall be processed on the legal basis of article 6(1)(f) GDPR (legitimate interest), article 6(1)(b) GDPR (performance of contract), **[**article 6(1)(c) GDPR (compliance with EEA law)**][**, article 6(1)(e) GDPR (public interest)**]*[adjust as applicable]*** and article 9(2)(f) GDPR (establishment, exercise or defence of legal claims), where applicable. The reason why the Contracting Parties believe that a legitimate interest exists are found in Annex A.

## Compliance With Principles of Processing of Personal Data

Each Contracting Party shall process Matter Data and any other personal data in this Arbitration as per the principles in article 5 GDPR. In particular, it shall be processed in a lawful, fair and transparent manner and only for specified, explicit and legitimate purposes. It shall ensure that Matter Data and any other personal data in this Arbitration is correct and necessary in view of the Purpose, and is processed only to the extent needed for the Purpose and stored as personal data only for as long as needed for the Purpose (subject, however, to Section 3.7).

Each Contracting Party shall maintain the technical and organizational measures necessary to protect Matter Data and any other personal data in this Arbitration from any unauthorized processing and accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to it, as further detailed in article 32 GDPR. In particular, it shall undertake at least the level of data security measures it would undertake for protecting own business secrets and in no event anything less than reasonable measures.

## Information Duties

The Arbitration Parties shall ensure that their representatives, their witnesses, their party-appointed experts and any other individual appearing on their behalf or in their interest in the Arbitration are aware that their personal data may be processed for the Purpose, including for publication and archiving, and have either signed Annex B or otherwise received the information pursuant to article 13 et seq. GDPR and the equivalent provisions under the other applicable Data Protection Laws if and insofar required to cover the processing of their personal data as per this Agreement (not taking into account local law exemptions that may not cover the other Contracting Parties).

These obligations shall apply *mutatis mutandis* also to the Arbitral Tribunal with regard to its administrative secretary, any tribunal-appointed experts, or any other individual it invites to appear in the Arbitration.

## Redaction of Sensitive Personal Data

Whenever an Arbitration Party submits Matter Data in the Arbitration, it shall ensure that private data (i.e. non-business-related personal data), any personal data of individuals of age 16 or below, any special categories of personal data (as defined under Art. 9 GDPR) and any personal data relating to criminal convictions and offences (as defined under Art. 10 GDPR) has been redacted to the extent reasonably possible, unless such personal data is required for the Purpose. Should an Arbitration Party dispute whether personal data has been redacted correctly by the other Arbitration Party, the two shall defer to the Arbitral Tribunal or a jointly selected third party for a good faith resolution of this dispute.

These obligations shall apply *mutatis mutandis* also to the Arbitral Tribunal with regard to any Matter Data it submits.

## Permitted Disclosure of Personal Data to Third Parties

Unless the Arbitration Parties have agreed otherwise, or the Arbitral Tribunal has ordered otherwise in the Arbitration, and subject to the exceptions listed in Section 3.1, each Contracting Party may share Matter Data with any potential or actual witness, expert, administrative secretary, translator, interpreter, court reporter or other individual to appear in or be involved in the Arbitration insofar as such disclosure is deemed necessary for the Purpose, and further provided such individual has signed a declaration of confidentiality as set out in Annex B or any other undertaking providing for a similar level of protection, unless such protection is already provided for by applicable law or a processor agreement has been entered into pursuant to Section 4.

Each Contracting Party may under this Agreement share any Matter Data with the Arbitral Institution for the Purpose without taking further steps (this shall not prejudice any additional requirements for data protection compliance as set forth by the Arbitral Institution).

## Erasure of Personal Data

Following the completion of the Arbitration and expiration of the deadline to challenge any award, each Contracting Party shall return, permanently erase without keeping a copy, or anonymize, any Matter Data it has received from another Contracting Party and is required to keep confidential pursuant to 3.1, except that (a) it may retain Matter Data insofar the Contracting Party is required to do so by law or – as the case may be – by its mandate towards an Arbitration Party, or for evidentiary, scientific or historic research purposes, and (b) erasure is not required where this would impose an unreasonable effort on such Contracting Party due to the nature of the systems legitimately used. In both cases, the obligations pursuant to this Agreement shall continue to apply for as long as such personal data is retained by the Contracting Party.

# Use of Processors

Where one or more Contracting Parties wish to use, for one of the processing activities in Annex A, a third party as a processor (within the meaning of article 4 GDPR) to carry out a processing of personal data on their behalf, they shall consult with the other Contracting Parties being controllers of said processing activity and enter into a processor agreement with the third party in accordance with article 28(3) GDPR and other applicable Data Protection Laws and, if such third party is in a country without an adequate level of data protection, they shall also enter into an agreement reflecting the "Standard Contractual Clauses (processors)" pursuant to the Decision 2010|87|EU (C(2010)593) of the European Commission without the Illustrative Indemnification Clause, or any clauses superseding them under the GDPR, as the case may be (the **EU Model Clauses**).

Individual interpreters and court reporters (but not legal entities) and the Arbitral Tribunal's secretary, if any, are not be considered processors but instead acting instead under the control of the relevant processor (article 29 GDPR). Hence, the provisions of Section 3.6 shall apply to them.

The Contracting Parties agree that Matter Data and other personal data related to the processing activities for which they are a controller may be stored with a Cloud or hosting service provider by a Contracting Party with no further consultation of the other Contracting Parties, provided that this occurs otherwise in compliance the above provisions of this Section 4.

# Data Protection Governance

## Data Subject and Supervisory Requests

Each Contracting Party who, as a controller of a processing activity defined in Annex A, receives a data subject request (including requests for access, correction, deletion or objection) or a request from data protection supervisory shall (a) without delay inform all other Contracting Parties who are also controllers of the processing activity at issue pursuant to Annex A, and (b) in good faith agree with them on how to respond to it, it being agreed that this shall not prevent a Contracting Party from complying the GDPR and other the Data Protection Laws applicable to it.

Each Contracting Party who is a controller of the processing activity at issue shall provide the other Contracting Parties who are also controllers of such processing activity any reasonably requested support allowing them to properly respond to such request pursuant to the GDPR and other Data Protection Laws applicable to such processing activity.

The Arbitral Tribunal may request that requests it has received are properly responded by the Arbitration Parties insofar they are also controllers of the processing activities at issue, even if they are not subject to the GDPR or other Data Protection Laws applicable to such processing activity.

Each Contracting Party may share the essence of this Agreement with any data subject or supervisory authority requesting it. The Contracting Parties shall beforehand agree on what the essence is, with the Arbitral Tribunal having the final decision power.

## Data Breaches

If a Contracting Party becomes aware of a personal data breach within the meaning of article 33 GDPR that relates to a processing activity defined in Annex A, it shall (a) without delay inform all other Contracting Parties of such breach and (b) in good faith agree with them on how to respond to it, including making notifications to supervisory authorities and data subjects as required under the GDPR and other Data Protection Laws applicable to such processing activity, it being agreed that this shall not prevent a Contracting Party from complying the GDPR and other the Data Protection Laws applicable to it.

Each Contracting Party who is a controller of the processing activity at issue shall provide the other Contracting Parties who are also controllers of such processing activity any reasonably requested support allowing them to properly respond to such data breach pursuant to the GDPR and other Data Protection Laws applicable to such processing activity.

The primary responsibility to do a data breach notification is with (a) the Contracting Party responsible for the data breach or where the breach occurred (if this can be determined and there is one), and (b) the Contracting Party being an Arbitration Party (in this order of priority).

## Cooperation

Each Contracting Party who is a controller of a processing activity defined in Annex A shall reasonably support any other Contracting Party who is also a controller of such activity in complying with its obligations and responsibilities under this Agreement and under the GDPR and other Data Protection Laws applicable to such activity.

## Non-Compliance

If a Contracting Party who is a controller of a processing activity defined in Annex A has indications that another Contracting Party who is also a controller of such activity is (a) not in compliance with the GDPR or other Data Protection Laws applicable to such activity or (b) not in compliance with this Agreement with regard to such activity, the other Contracting Party shall in good faith provide any cooperation, including any information, as reasonably requested, required and available, to clarify and resolve such issue. If the two Contracting Parties are both Arbitration Parties and cannot agree, the Arbitral Tribunal shall review the alleged non-compliance. The Arbitration Parties shall fully cooperate in the context of such review. The Arbitral Tribunal's reasonable and reasoned opinion shall be binding for both Contracting Parties under this Agreement, subject to its powers in the Arbitration and subject to the dispute being brought before a competent state authority.

## Documentation

Annex A provides the records of processing pursuant to article 30 GDPR for the Arbitral Tribunal and other Contracting Parties. Further, each Contracting Party is responsible for its own ability to demonstrate compliance with article 5(1) GDPR pursuant to article 5(2) GDPR (or equivalent provisions under applicable Data Protection Laws), and shall, on its own, undertake a data protection impact assessment where required under the GDPR or applicable Data Protection Laws.

# Various Provisions

This Agreement shall remain in force as long as any of the Contracting Parties is processing Matter Data or engaged in any of the processing activities defined in Annex A.

Each Contracting Party shall be responsible for compliance with this Agreement by its employees, contractors, subcontractors, agents and other third parties it relies upon for its processing of personal data for the Purpose.

Any changes to this Agreement shall be valid only if agreed in writing. Should any terms of this Agreement be void or ineffective or lose their effectiveness due to later circumstances, this shall not affect the validity or effectiveness of the remaining provisions.

This Agreement shall be governed by [■] substantive law (excluding any conflict of laws provisions). The ordinary courts at the seat of the Arbitral Tribunal shall have the exclusive jurisdiction to adjudicate any disputes under or in connection with this Agreement.

***[Signatures of the Contracting Parties]***

*Annex A*

**Description of the Processing Activities Covered\***

| Activity|Purpose | Controller(s) | Categories of Data | Categories of Recipients |
| --- | --- | --- | --- |
| Arbitral File, including submissions by each Arbitration Party for inclusion into the File (including any Redfern procedure) | Arbitral Tribunal, Arbitration Parties**[**, Arbitration Counsel**]** | Business correspondence, contracts and other factual information and pleadings contained in party submissions, documentary evidence, witness statements, expert reports, pleading notes and other records; hearing transcripts; procedural orders; awards; correspondence with the Arbitral Institution | Contracting Parties, service providers, witnesses, experts, other individuals appearing in the Arbitration, Arbitral Institution |
| Hearings | Arbitral Tribunal, Arbitration Parties**[**, Arbitration Counsel**]** | Same as for the Arbitral File. | Contracting Parties, service providers, witnesses, experts, other individuals appearing in the Arbitration, Arbitral Institution |
| Administration of the Proceeding | Arbitral Tribunal, **[**Arbitration Parties**[**, Arbitration Counsel**]]** | Information about submissions, evidence, parties, witnesses, experts, service providers, costs, locations and other aspects of the Arbitration | Contracting Parties, service providers, witnesses, experts, other individuals appearing in the Arbitration, Arbitral Institution |
| Arbitral Award | Arbitral Tribunal, **[**Arbitration Parties**[**, Arbitration Counsel**]]** | Information about the case | Arbitration Parties, Arbitration Counsel, Arbitral Institution |

The above processing activities are limited to the Arbitration, and do not include the Arbitration Parties' preparation of submissions or their internal processing of their own submissions.

The Contracting Parties agree that in addition to the GDPR, **[**the Swiss Data Protection Act**]** and [■] are considered a Data Protection Laws applicable to "Arbitral File" and "Hearings" processing activity for the purpose of this Agreement. This shall not prejudice whether a particular Contracting Party is subject to the GDPR or any other Data Protection Laws.

The data subjects affected may include the Arbitration Parties' employees officers, directors or consultants, the employees, officers, directors or consultants of their customers, business partners and other companies relevant to the Arbitration, and any individual appearing in the Arbitration.

None of the parties has appointed a data protection officer or representative pursuant to article 27 GDPR.

The data security measures are described Section 3.3 of the Agreement.

Personal data may be transferred to any location worldwide, if necessary for the purposes of the Arbitration (cf. article 49(1)(e) GDPR). The duration is governed by Section 3.7 of the Agreement.

The decision to use a legitimate interest as a legal basis for processing for all of the above processing activities has been made for the following reasons: *The Contracting Parties depend on the ability to use personal data in the Arbitration in order to permit the Arbitral Tribunal to conclude the issues in dispute, and redacting all personal data would not only be overly burdensome, it would also significantly limit the informational value of the evidence, such as information on the sender and recipients of documents and assessment as to who has made which statement.* *The processing of personal data will already be limited to what is necessary for the Purpose, it is subject to the safeguards of this Agreement even for those parties who are not subject to the GDPR, and the use of the personal data for the Purpose is strictly controlled by the Arbitral Tribunal and its procedural orders. The personal data is not made public; access to the personal data will be very limited. The personal data is mainly of business related nature, and it is unlikely that the processing for the Purpose will have any negative effects on the data subjects, and if it does have due to the findings made in the proceeding, then such findings will have been made in a strictly controlled, judicial process comparable as with a state court proceeding safeguarding the rights of such data subjects. Overall, the relevant Contracting Parties therefore believe that it is justified to have personal data submitted and processed as envisaged by the Processing Activities described in the above table, where this is not already justified on the other legal grounds listed in Section 3.2.*

\* This shall also serve as the records of processing pursuant to article 30 GDPR.

*Annex B*

**Confidentiality Declaration**

by ***[Full Name]***

 Living at ***[Home Address]***;

 Currently working for ***[Employer]*** at ***[Address]***;

 As ***[present title, occupation or job description]***.

I have been asked by ***[Name of Contracting Party]***, ***[Address]*** (the **Instructing Party**), to appear, or be involved, in the arbitration proceeding [■] Case No. [■] commenced by ***[Party 1]*** against ***[Party 2]*** through a request for arbitration submitted to the Secretariat of the ***[Arbitral Institution]*** on [■] (the **Arbitration**). As part of such involvement, I may be given or will otherwise obtain personal data of other individuals as well as other confidential information (the **Confidential Information**).

I hereby agree, for the benefit of the Instructing Party and the other parties to the Arbitration (including party counsel and arbitrators, all, the **Beneficiaries**), (a) to maintain in strict confidence any Confidential Information I receive, (b) to protect such Confidential Information with an adequate level of data security, (c) not to use such Confidential Information for any purpose other than the Arbitration, (d) to follow any instructions of the Instructing Party as to the processing of Confidential Information, and (e) to return or erase, without keeping a copy, any Confidential Information upon request or once my role in the Arbitration has ended, except that (x) I may retain a retain a copy of any written statement I have submitted in the Arbitration, and (y) I do not have to erase Confidential Information where this is not reasonably possible due to the nature of the systems legitimately used; in both cases, my obligations (a) – (d) shall continue to apply for as long as such Confidential Information is retained by me. This confidentiality declaration is governed by substantive Swiss law, and each Beneficiary may initiate legal actions against me at its own seat.

I take not and acknowledge that my own personal data, including whatever I submit to the Arbitration, may be processed by the Beneficiaries and other parties involved in the Arbitration for the purposes of the Arbitration, which may involve such personal data to become **[**public or**]** archived. I confirm that, I was offered to be informed, and was informed to the extent I was interested, by the Instructing Party about these parties and how to contact them, their data protection officers and representatives, if any, the legal basis for such processing, including the legitimate interest, the categories of recipients and categories of my personal data at issue, including private and public sources used, the fact that the processing may take place worldwide and the safeguards in place, **[**the countries of processing**]**, the duration of the processing of my personal data, my data subject rights (including my right of access and correction), my right to withdraw any consent for processing I may have been asked to give, my right to lodge a complaint with a supervisory authority, whether I am required to provide personal data, ***[add any other required information]*** and the existence of any automated decision-making.

*[Date, Place] [Signature]*