

**Toelichting op de Modelovereenkomst/template
donation agreement
with respect to COVID 19 pandemic relief
supplies
between the State of the Netherlands and
an organisation or a State within the EU**

Toelichting voor de gebruiker van dit model: graag eerst goed lezen.

- *Dit voorblad is alleen voor intern gebruik. Bij doorsturen naar de wederpartij graag deze 1^e blz verwijderen.*
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- *Deze modelovereenkomst is alleen bestemd voor schenkingen aan landen of organisaties binnen de Europese Unie.*
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- *Deze modelovereenkomst kan worden gebruikt wanneer schenkingen aan buitenlandse staten (binnen EU) worden gedaan, maar ook wanneer binnen de EU schenkingen aan NGO's worden gedaan, zoals het Rode Kruis.*
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- *Deze modelovereenkomst is niet bestemd voor schenking van vaccins, maar alleen voor schenking van hulpmiddelen ("Relief Supplies"), zoals chirurgische maskers en mond -en neusmaskers, medische handschoenen, jassen en schorten brillen, desinfectans, IC-apparatuur, beademingsapparatuur, en antigeen sneltesten).*
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- *Let op: manuals, field safety notices, or any other documentation moet je meesturen ofwel bij dit contract ofwel bij de goederen. Indien mogelijk is het verstandig een bijlage bij de overeenkomst te voegen waarin de documentatie wordt opgesomd.*
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- *Artikelen 2.2 en 5.3 gaan ervan uit, dat de wederpartij het transport naar het EU-land van bestemming regelt en betaalt. Als er andere afspraken moeten worden gemaakt, moet de overeenkomst in overleg met een jurist en fiscalist worden aangepast. Of er kan het template worden gebruikt die mede in vervoer door de Staat der Nederlanden voorziet.*
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- *In het document met geel aangegeven delen graag invullen.*

- *Op bijlage 1 invullen welke hulpmiddelen worden geschonken. Eventueel kunnen hier ook de manuals, handleidingen e.d. worden opgesomd*

Donation Agreement

between

the State of the Netherlands

and

[.....]
hier de naam invullen van de wederpartij]

**with respect to COVID-19 pandemic
relief supplies**

THE PARTIES TO THIS AGREEMENT ARE:

- A. the legal entity **the State of the Netherlands**, having its registered office in The Hague (the Netherlands), at the offices of the Ministry of Health, Welfare and Sport, with office address: (2511 VX) The Hague (the Netherlands), Parnassusplein no. 5, hereinafter referred to as: **'The Netherlands'**;
- B. the legal entity [.....], having its registered office [.....hier de naam en adres invullen van de wederpartij], hereinafter referred to as: **'Recipient'**;

hereinafter collectively referred to as: **'the Parties'**.

THE PARTIES CONSIDER THE FOLLOWING:

- (i) There is a global pandemic due to the virus SARS-CoV-2 (hereafter the **'Pandemic'**) as a result of which there is an acute need worldwide for relief supplies to fight the pandemic or mitigate the effects of the Pandemic.
- (ii) Recipient is also suffering from the Pandemic, and has an urgent need for relief supplies.
- (iii) The Netherlands are able to provide Recipient with the relief supplies specified in **Annex 1**, hereinafter referred to as: the **'Relief Supplies'**.
- (iv) The Netherlands are able and willing to donate the Relief Supplies to Recipient and Recipient is able and willing to accept such donation.

- (v) Parties have decided to record their agreement in this donation agreement.

PARTES AGREE TO THE FOLLOWING:

1. Donation

- 1.1 The Netherlands donate to Recipient, under the conditions and provisions set out in this Agreement (the '**Agreement**') the Relief Supplies.
- 1.2 The Netherlands will endeavor to supply Recipient with accompanying manuals, field safety notices, or any other documentation relating to the Relief Supplies.
- 1.3 Recipient accepts this donation and accepts the conditions and provisions as set out in this Agreement.

2. Delivery and transfer of title

- 2.1 Recipient warrants to the Netherlands that the Relief Supplies may and will be introduced into and used only within the jurisdiction of Recipient, and that all public law requirements for that introduction and use are met before the Relief Supplies are shipped.
- 2.2 The Netherlands will deliver the Relief Supplies to Recipient 'Ex Works' at the depot at [.....opslagplaats in Nederland invullen die van toepassing is], therefore within the Netherlands and before the transport to the jurisdiction of Recipient as the EU-country of destination. The Relief Supplies will be made available to the representative designated by Recipient, through the carrier engaged by Recipient. Recipient or its representative is responsible and liable for the transportation of the Relief Supplies from the

Netherlands to the EU-country of destination.

- 2.3 Recipient will acknowledge receipt of the Relief Supplies by means of an acknowledgment of receipt signed by or on behalf of Recipient.
- 2.4 The delivery of the Relief Supplies is completed at the moment Recipient or the representative designated by Recipient actually takes delivery the Relief Supplies at the depot stated in article 2.2, and through this process ownership will be transferred to Recipient.
- 2.5 As of the completion of the delivery, the Relief Supplies shall be at the expense and risk of Recipient. This includes the risk of loss, damage or other reasons rendering the Relief Supplies unusable or less usable. From this moment of completion of delivery, all risks and all costs and possible benefits of the Relief Supplies will be borne by Recipient.
- 2.6 The Relief Supplies will be delivered free of attachments or rights of third parties and in the condition in which these are at that time ('as is').
- 2.7 All deviating or additional agreements shall be in writing.

3. USE OF RELIEF SUPPLIES

- 3.1 Recipient declares and guarantees, that he is aware of the (publicly) available information with respect to usage of the Relief Supplies.
- 3.2 Recipient shall ensure accurate, safe and proper storage, logistics

and usage of the Relief Supplies, compliant with i.a. the applicable publicly available information and the manuals, field safety notices and other documentation as provided by the Netherlands.

- 3.3 The Netherlands will not in any way be responsible for storage, logistics or usage, unless Parties enter into additional agreements in writing to this effect, nor for the provision of training, whether or not prescribed in the documentation accompanying the Relief Supplies.
- 3.3 Recipient is responsible for reporting adverse reactions with respect to the use of the Relief Supplies to the producer.
- 3.4 The Relief Supplies will be used by Recipient only in its jurisdiction, being the EU-country of destination, to fight the pandemic or mitigate the effects of the Pandemic for the benefit of its citizens. Recipient will only transport the Relief Supplies to its jurisdiction and will not export the Relief Supplies outside of its jurisdiction.

4. LIABILITY AND INDEMNITY

- 4.1 The Parties agree that the Netherlands shall not be liable for damages resulting from transport, from a failure to deliver the Relief Supplies, from an untimely delivery of the relief Supplies, or from the use of the Relief Supplies.
- 4.2 Recipient shall indemnify and hold harmless the Netherlands against claims from third parties aimed at compensation for damages that are caused by or in connection with the donated Relief Supplies. If damages threaten to arise, or have arisen, the Netherlands shall, within its reasonable abilities, make medical knowledge available to Recipient in order to mitigate the consequences of such damages to the extent possible and to provide medical expertise for the purpose of damage control.

5. MISCELLANEOUS PROVISIONS

Entry into force

- 5.1 This Agreement shall be concluded and enter into force upon signature by each of the Parties. It is not required that all signatories sign the same copy of the Agreement.
- 5.2 If the Agreement is signed on several copies and the Parties exchange a copy thereof – for example in PDF format by e-mail – the copies exchanged and the signed copies together constitute the record of the Agreement.

Costs and taxes

- 5.3 All costs incurred by a Party in connection with the provisions of this Agreement shall be borne by that Party. The costs of storage are for the account of the Netherlands until delivery in accordance with article 2. The costs of transport of the Relief Supplies after delivery are for the account of Recipient.
- 5.4 Save for Clause 5.5, any taxes or fees payable for the donation of the Relief Supplies are borne by Recipient.
- 5.5 The delivery of the Relief Supplies will not be subject to turnover tax, donation taxes or other taxes in the jurisdiction of the Netherlands, or (import) turnover tax or donation taxes in the jurisdiction of Recipient. If, nevertheless, taxes must be paid in the jurisdiction of the Netherlands, these will be for the account of the Netherlands. If, nevertheless, taxes or import duties must be paid in the jurisdiction of Recipient, these will be for the account of Recipient.

Announcements

- 5.6 Communications from one Party to the other Party for the implementation of the agreements laid down in the Agreement only have effect if they are made in writing. 'In writing' is understood to mean: by letter, fax or e-mail, provided that the identity of the sender can be established with sufficient certainty.
- 5.7 All announcements, requests, claims, demands and other messages shall be made in writing in the English language and sent to the following addresses (or another address specified for this purpose by one Party to the other):

To the Netherlands:	To Recipient:
Address: Parnassusplein 5, 2511	Address: [**]
VX The Hague (the Netherlands)	E-mail: [**]
5 5.1.2e @minvws.nl	
and 5.1.2e @minvws.nl	To the attention of: [**]
To the attention of: 5.1.2e	
and 5.1.2e	

Dissolution and transfer

- 5.8 The Parties waive their right to affect the Agreement or to have it affected by error or to dissolve it in or out of court.
- 5.9 If one or more of the provisions laid down in the Agreement is or are non-binding, the other provisions of the Agreement shall remain in force. The Parties undertake to then replace the non-binding provisions with provisions that are binding and that deviate as little as possible from the non-binding provisions in view of the purpose and purport of the Agreement. The rights and obligations

under the Agreement cannot be transferred directly or indirectly by either Party, except with the express written consent of the other Party.

Entire agreement

5.10 The Agreement constitutes the entire Agreement between the Parties with respect to the subject matter governed by the Agreement and supersedes all prior agreements, documents, e-mails, correspondence, (direct or indirect) understandings and representations between the Parties, whether oral, written or otherwise.

Applicable law and disputes

5.11 The Agreement and all obligations arising from or related to the Agreement are governed by Dutch law.

5.12 Any disputes arising from or in connection with this Agreement between the Parties will be resolved in mutual consultation to the extent possible, either by means of mediation or otherwise. If an amicable settlement is not possible, disputes arising from or in connection with this Agreement between the Parties will be settled by the District Court of The Hague exclusively.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

A. **COMPLETED** in The Hague (the Netherlands) and [city] (Recipient) on [date] 202.., in duplicate in the English language, both texts being equally authentic.

Recipient

The Netherlands

By: [**]

Authorised by [**]

By: [**]

Authorised by [**]

Annex 1