Data Processing Agreement ARVODI 2018 Rechtspraak

Contract number: […].

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague,
On behalf of the Raad voor de Rechtspraak (Council for the Judiciary)/Court/Courts,
legally represented in this matter by
[signatory's name and position],
hereafter referred to as "the Contracting Authority",

and

2. [full name and legal form of the Contractor],
which has its registered office in [place],
legally represented in this matter by
.... (and ....) [signatory's name],
hereafter referred to as "the Contractor",

jointly referred to as "the Parties";

WHEREAS:

- Insofar as the Contractor processes Personal Data for the Contracting Authority in the context of the Contract, the Contracting Authority qualifies as a Controller for the Processing of Personal Data and the Contractor as a Processor;
- The Parties to this Data Processing Agreement, as referred to in Article 28(3) of the Regulation, wish to record their agreements on the Processing of Personal Data by the Contractor.

AGREE AS FOLLOWS:

Article 1 Definitions

Certain terms in this Data Processing Agreement are written with initial capitals. These terms have the meaning as defined in the ARVODI-2018 or the Regulation, with some of these terms being used in a manner that specifically relates to this Data Processing Agreement. Accordingly and additionally, the following terms, whether used in the plural or singular, or as a verb or noun, are defined in this Data Processing Agreement as follows:

1.1   ARVODI-2018: General Government Terms and Conditions for Public Service Contracts 2018 (*Algemene Rijksvoorwaarden voor het verstrekken van opdrachten tot het verrichten van Diensten 2018*).

1.2   Data Subject: the person to whom the Personal Data relates.

1.3   EEA: European Economic Area, being all countries within the European Union and Liechtenstein, Norway and Iceland.

1.4   Personal Data Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

1.5   Recipient: a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing.

1.6   Contract: the Contract between the Contracting Authority and the Contractor [name of contract] dated [date], reference number [number].

1.7   Personal Data: any data concerning an identified or identifiable natural person that is Processed by the Contractor for the Contracting Authority in the context of the Contract.

1.8   Supervisory Authority: an independent public authority which is established by a Member State pursuant to Article 51 of the Regulation.

1.9   Regulation: 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).

1.10   Processor: a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller.

1.11   Data Processing Agreement: this agreement including its recitals and the accompanying schedules.

1.12   Processing: any operation or any set of operations concerning Personal Data or any set of Personal Data, carried out in the context of the Contract, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

1.13   Controller: the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.

Article 2 Object of this Data Processing Agreement

2.1   This Data Processing Agreement governs the Processing of Personal Data by the Contractor in the context of the Contract and is inextricably linked to the Contract.

2.2   The nature and purpose of the Processing, the type of Personal Data and the categories of Personal Data, Data Subjects and Recipients are set out in Schedule 1.

2.3   The Contractor guarantees that the appropriate technical and organisational measures will be taken, in order to ensure that Processing complies with the requirements of the Regulation and that the rights of the Data Subject(s) are protected.

2.4   The Contractor guarantees compliance with the requirements of the applicable legislation relating to the Processing of Personal Data.

Article 3 Entry into force and duration

3.1   This Data Processing Agreement enters into force as soon as it has been signed by both Parties.

3.2   This Data Processing Agreement terminates after and insofar as the Contractor has deleted or returned all Personal Data, and deleted all existing copies thereof, in accordance with Article 10.

3.3   This Data Processing Agreement cannot be terminated prematurely.

Article 4 Scope of Contractor's competence to process Personal Data

4.1   The Contractor is only permitted to Process the Personal Data for and on the basis of written instructions from the Contracting Authority, except where a statutory rule makes such Processing by the Contractor obligatory. In such event the Contractor must notify the Contracting Authority of this statutory rule prior to the Processing, except where this statutory rule prohibits this notification for important reasons of public interest.

4.2   The Contractor has no control over the purpose or means of the Personal Data Processing as referred to in the Regulation.

Article 5 Security measures

5.1   Without prejudice to Article 2.3 of this Data Processing Agreement, the Contractor must implement the technical and organisational security measures described in Schedule 2.

5.2   The Parties recognise that guaranteeing an appropriate level of security may require additional security measures to be implemented on an ongoing basis. The Contractor guarantees an appropriate level of security having regard to the risks entailed.

5.3   At the express written request of the Contracting Authority, the Contractor will adopt additional measures to ensure the security of the Personal Data.

5.4   The Contractor must not process any Personal Data outside a European Union member state, except where it has obtained express written approval, if necessary provided with detailed conditions, to do so from the Contracting Authority and barring statutory obligations to the contrary.

5.5   If the Contractor discovers any illegal or unauthorised Processing or infringements of the security measures referred to Article 5.5.(1) and (2), it must inform the Contacting Authority without undue delay.

5.6   The Contractor will assist the Contracting Authority in ensuring compliance with the obligations under Articles 32 up to and including 36 of the Regulation.

Article 6 Duty of confidentiality of the Contractor's Personnel

6.1   The Personal Data is confidential as referred to in Article 13.1 of the ARVODI 2018.

6.2   The Contractor guarantees that its Personnel is subject to the obligation to observe the confidentiality as referred to in Article 13.2 of the ARVODI 2018.

Article 7 Subprocessor

7.1   If the Contractor, with due regard for the provisions of Article 8 of the ARVODI 2018, engages another Processor to carry out Processing activities for the Contracting Authority, the other Processor must be bound by an agreement imposing the same data protection obligations as those imposed by this Data Processing Agreement.

7.2   The Contractor is not allowed to engage another processor without the prior written consent of the Contracting Authority. The Contracting Authority will not withhold its consent, to which the Contracting Party may set further conditions, without reasonable grounds.

7.3 Consent of the Contracting Authority does not detract from the Contractor's own responsibility and liability with respect to the fulfilment of its obligations under the Contract.

Article 8 Assistance concerning rights of Data Subjects

8.1 The Contractor will assist the Contracting Authority in fulfilling its obligations to respond to requests of the Data Subject concerning its rights under chapter III of the Regulation, to the extent possible and taking into account the nature of the Processing by appropriate technical and organisational measures.

8.2 Parties will each bear their own costs incurred in connection with Article 8.1.

Article 9 Personal Data Breach

9.1 In accordance with the agreements set out in Schedule 3, the Contractor must inform the Contracting Authority, without undue delay, but no later than within 24 hours, after it becomes aware of any Personal Data Breach. Where applicable, the Contracting Authority will notify the competent Supervisory Authority and the Data Subject(s). The Contractor will lend its full cooperation to this.

9.2 After reporting an incident as referred to in Article 9.1, the Contractor will also inform the Contracting Authority of any developments relating to the Personal Data Breach.

9.3 Parties will each bear their own costs incurred in connection with the reporting of incidents to the competent Supervisory Authority and the Data Subject(s).

Article 10 Return or erasure of Personal Data

10.1 The Contractor must ensure that, after the Contract is terminated, or earlier if so agreed, it erases or returns all Personal Data to the Contracting Party and deletes all existing copies, except where it has a statutory obligation to retain the Personal Data.

10.2 The Parties may agree retention periods for individual or categories of Personal Data. At the end of the agreed retention period, the Contractor must ensure the erasure or return and deletion of copies of the Personal Data concerned, except where it has a statutory obligation to retain that Personal Data.

10.3 When the Contractor erases and/or deletes copies, the Contractor must confirm this in writing to the Contracting Authority, quoting the contract reference as stated in Article 1.6, in order that the Contracting Authority can ascertain that this has been done safely and correctly.

10.4 Personal Data must be returned in accordance with the format and by the means requested by the Contracting Party. Parties will consult with one another to determine the format and means prior to the termination of the Contract.

Article 11 Obligation to supply information and audit obligation

11.1   The Contractor will make all information available which is necessary to demonstrate that the obligations under this Data Processing Agreement are and will be fulfilled.

11.2   The Contracting Authority may perform or arrange for an audit of the processing activities covered by this Data Processing Agreement if specific circumstances warrant it. The Contractor shall cooperate fully with audits, including audits of the Contractor's Personnel, unless it cannot reasonably be expected to do so.

11.3   The Contractor must immediately notify the Client if, in its opinion, an instruction by the Contractor under Article 11(1) and or 11(2) of this Data Processing Agreement violates a statutory rule regarding data protection.

11.4   The Parties shall each bear their own costs incurred in connection with the provision of information and audits referred to in this Article 11, including the costs of third parties engaged by them.

11.5   The Contracting Authority may at any time propose further measures as occasioned by the information obtained under this Article 11. Contractor must implement such measures, insofar as these are reasonable.

Article 12 Liability

12.1   The provisions of Article 22 ARVODI (Liability) shall apply in full to material and/or immaterial damages to suffer and/or suffered by the Contracting Authority if the Other Party fails to discharge an agreed obligation as agreed upon and included in this Data Processing Agreement.

Agreed on the later of the two dates stated below and signed in duplicate.

The Hague, [date][place], [date]

Raad voor de Rechtspraak (Council for the Judiciary)/ the Court of (location) / [name Contractor]
the Courts of (locations),
represented by,

[signatory's name]   [signatory's name]
[signatory's position]   [signatory's position]

Schedule 1 Processing Personal Data

This Schedule must in any case specify:

Overview of the Processing

The nature and purpose of the Processing
 	
Personal data may be processed only to the extent proportionate for the following limited purposes:
   a. Delivering the Services
   b. Security of the Services
   c. Keeping the Services current
 	
Contractor must not, in any case, Process the Personal Data for the following purposes:
   a. Data analyses
   b. Profiling, including but not limited to the creation of psychometric, psychographic or other user profiles.
   c. Advertising (including targeted on-screen recommendations for products or services offered by Contractor, but not subscribed to or used by the Contracting Authority) or any similar commercial purpose, or
   d. Market research aimed at creating new features, services or products or any other purpose
Except where this permitted by written instructions from the Contracting Authority.	

The type of Personal Data	
Description of the categories of Personal Data	
Description of the categories of Data Subjects	
Description of Personal Data Recipients	
Location of the Processing of the Personal Data	
Agreements concerning retention periods	

Subprocessor(s)

Name and contact details subprocessor	

Chamber of Commerce number of the subprocessor	
The nature and purpose of the Processing	
The type of Personal Data	
Description of the categories of Personal Data	
Description of the categories of Data Subjects	
Description of Personal Data Recipients	
Location of the Processing of the Personal Data	
Agreements concerning retention periods	

The registration which a Controller is required to keep based on Article 30 of the Regulation can, inter alia, be used for the content of this Schedule.

Schedule 2. Appropriate technical and organisational measures

Explanation:
This schedule needs to specify the standards and measures that the Contractor must adopt or implement as part of the security of the Processing. For this purpose, reference can be made to documents that set out standards and measures, such as the specification document or the request for proposal, where applicable.

Example 1 for services:
The Contractor must in any case take the security measures as set out in the specifications in the Document "Eisen en wensen behorende bij de functionele uitvraag met kenmerk"("Requirements and wishes belonging to the functional request for proposal") with reference (reference). Additionally, the Contractor must lend its reasonable cooperation with the implementation of any additional security measures that may result from Security and Privacy analyses, including the Data Protection Impact Assessment (DPIA) conducted by (part of the Rechtspraak).

If applicable, a specification of the security measures taken by the Contractor will be attached as an appendix to this Data Protection Agreement.

Example 2 for research:
The Contracting Authority will require the Contractor's researchers to sign a signed confidentiality agreement prior to commencing the research.

In addition, the Contractor must in any case take the security measures as set out in the specifications in the "Requirements and wishes belonging to the functional request for proposal" document with reference (reference).

For the rest, reference is made to the Agreement to Perform Research with reference (reference) and the tender underlying the contract.

Schedule 3: Arrangement concerning Personal Data Breaches (including data leaks)

Explanation:
this Schedule includes all arrangements on how the Contractor must inform the Contracting Party on Personal Data Breaches.
Each Party is responsible for ensuring that its contact details are accurate, up to date and reliable.

A. Point of contact Contracting Party
The Contractor must report the Personal Data Breaches, as referred to in Article 9 of this Data Processing Agreement, to the officer acting as the contact person of the Contracting Party. Upon commencement of this Data Processing Agreement and from Monday to Friday between 08.00 and 17.00 the contact person of the Contracting Party is:

Point of contact: Rechtspraak Servicecentrum
Email address: rechtspraak.nl
Telephone number: 088-361 61 61

Outside office hours, on weekends or holidays notifications must be send to:
Point of contact: Team Privacy
Email address: 5.1(2)i @rechtspraak.nl

The Contractor must always make a notification of the fact that the email concerns a Personal Data Breach by including the following subject line: "Personal Data Breach at (name Contractor)". The content of the email must at least contain the information referred to under D of this Schedule. The Contractor must effect the notification by email and also contact the Rechtspraak Servicecentrum (within office hours) by telephone to verify that the Contracting Party received the email concerning the Personal Data Breach .

B. Point of contact Contractor
Upon commencement of this Data Processing Agreement and from Monday to Friday between 08.00 and 17.00 the contact person of the Contractor is:

Contact details Contractor
Position:
Name:
Email address:
Telephone number:

Outside office hours, on weekends or holidays notifications must be send to:
Position:
Name:
Email address:
Telephone number:

Parties will inform each other in writing as soon as possible in case the abovementioned contact details change.

C. Notification
The information must be provided in such a way that the Contracting Party is able to comply with Article 33 and 34 of the Regulation. As the Controller, it is up to the Contracting Party – with due regard to the Regulation, the Dutch GDPR Implementation Act and related laws and regulations – to assess and determine whether the incident can be defined as a Personal Data Breach and/or must be notified to the Supervisory Authority and/or to the Data Subject(s).

D. Information that at least should be provided by the Contractor

Name Contractor
Contact details reporter of the Personal Data Breach
Date and time of discovery of the (alleged) Personal Data Breach
Nature of the Personal Data Breach
The Personal Data and the Data Subject(s)
Likely consequences of the Personal Data Breach
Measures proposed or taken by the Contractor to address the Personal Data Breach, including, where appropriate, the measures to mitigate possible adverse effects of the Personal Data Breach

E. Cooperation

The Parties will fully cooperate in analysing and mitigating the cause of the Personal Data Breach and any notification of the Personal Data Breach to the Supervisory Authority and, if required, to the Data Subject(s).