Instructions

- Text/provisions that are optional are marked <*OPTIONAL*>.
- Where the word 'OR' is placed between the clauses, one of the options should be selected. The other option(s) should be deleted from the agreement.
- This Data Processing Agreement can only be concluded in combination with a main contract.

NB: Delete these instructions from the final agreement.

(Date: September 2023)

Contents

Article 1 Definitions 2
Article 2 Object of this Data Processing Agreement 3
Article 3 Entry into force and duration 3
Article 4 Scope of the Other Party's Processing competence 4
Article 5 Security measures 4
Article 6 Duty of confidentiality – the Other Party's Staff 4
Article 7 Subprocessor 4
Article 8 Assistance concerning rights of Data Subjects 5
Article 9 Personal Data Breach 5
Article 10 Return or erasure of Personal Data 5
Article 11 Obligation to supply information and audit obligation 6
Article 12 Liability 6
Schedule 1 Processing Personal Data 7
Schedule 2. Appropriate technical and organisational measures 9
Schedule 3: Arrangement concerning Personal Data Breaches (including data leaks) 10

Data Processing Agreement (ARBIT 2022)

Contract number: [...].

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague,
represented by the Minister of/State Secretary for [portfolio],
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 Contractual Partner],
which has its registered office in [place],
legally represented in this matter by
..... *(and .....)* [signatory's name],
hereafter referred to as 'the Other Party',

jointly referred to as 'the Parties';

WHEREAS:

- the Data Processing Agreement arises from the Contract with reference [reference];
- the Contract is subject to the Framework Agreement (Raamovereenkomst') concerning the provision of [reference] and related Services concerning the tender lot ('Perceel') with reference [reference];
- insofar as the Other Party processes Personal Data for the Contracting Authority in the context of the Contract, the Contracting Authority, under article 4 (7) and (8) of the Regulation, qualifies as a controller for the Processing of Personal Data and the Other Party as a processor;
- the Parties to this Data Processing Agreement, as referred to in article 28, paragraph 3 of the Regulation, wish to record their agreements on the Processing of Personal Data by the Other Party.

AGREE AS FOLLOWS:

Article 1 Definitions

Certain terms in this Data Processing Agreement are written with initial capitals. These terms are defined in article 1 of the General Government Terms and Conditions for IT Contracts 2022 (ARBIT 2022). In derogation therefrom or in addition thereto, the following terms are defined below for the purposes of this Data Processing Agreement:

1.1 ARBIT-2022: General Government Terms and Conditions for IT-contracts 2022 (Algemene Rijksvoorwaarden voor IT overeenkomsten 2022).

1.2 Data Subject: the person whom the Personal Data concerns.

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 in security that leads to the accidental or unlawful destruction, loss, change or unauthorised provision of, or unauthorised access to, data that has been transferred, stored or processed in any other way.

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 agreement between the Contracting Authority and the Other Party [name] dated [date], reference number [number].

1.7 Personal Data: any data concerning an identified or identifiable natural person that is processed by the Other Party 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 via automated or manual procedures, including in any case the collection, recording, organisation, structuring, storage, updating or modification, retrieval, consultation, use, disclosure by means of transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data.

Article 2 Object of this Data Processing Agreement

2.1 This Data Processing Agreement governs the Processing of Personal Data by the Other Party in the context of 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 Other Party 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 Other Party 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 Other Party has deleted or returned all Personal Data, and deleted all existing copies thereof, in accordance with Article 10.

3.3 Neither of the Parties may terminate this Data Processing Agreement before the Contract terminates.

Article 4 Scope of the Other Party's Processing competence

4.1 The Other Party 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 Other Party obligatory. In such event the Other Party 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 Other Party 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 Other Party 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 Other Party guarantees an appropriate level of security having regard to the risks entailed.

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

5.4 The Other Party will not process any Personal Data outside a European Union member state, unless it has obtained express written approval to do so from the Contracting Authority and barring statutory obligations to the contrary.

5.5 If the Other Party discovers any illegal or unauthorised Processing or infringements of the security measures referred to paragraphs 1 and 2, it will inform the Contacting Authority without unreasonable delay.

5.6 The Other Party will assist the Contracting Authority in ensuring compliance with the obligations under articles 32 to 36 inclusive of the Regulation.

Article 6 Duty of confidentiality – the Other Party's Staff

6.1 The Personal Data is confidential as referred to in article 17.1 of the ARBIT 2022.

6.2 At the request of the Contracting Authority, the Other Party will show that its Staff have undertaken to observe the duty of confidentiality referred to in article 17.2 of the ARBIT 2022.

Article 7 Subprocessor

7.1 If the Other Party, with due regard for the provisions of Article 23 of the ARBIT-2022, 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 Other Party 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 Other Party'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 Other Party 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 The Other Party will inform the Contracting Authority, without unreasonable delay, as soon as it becomes aware of any Personal Data Breach, in accordance with the agreements set out in Schedule 3. Where applicable, the Contracting Authority will notify the competent Supervisory Authority and the Data Subject(s). The Other Party will lend its full cooperation to this.

9.2 After reporting an incident as described in the first paragraph, the Other Party will also inform the Contracting Authority of developments relating to the Personal Data Breach.

9.3 Each of the Parties will bear any costs they incur in connection with reporting incidents to the competent supervisory authority and the Data Subject.

Article 10 Return or erasure of Personal Data

10.1 The Other Party 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 Other Party 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 Other Party erases and/or deletes copies, the Other Party 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 Contracting Authority may request information or perform or arrange for an audit, in accordance with article 5 of the ARBIT-2022, to demonstrate that the obligations covered by this Data Processing Agreement are and will be fulfilled by the Other Party.

11.2 During the term of the Agreement, the Other Party will provide the Contracting Authority with the most recent certifications performed by an independent external expert in which it gives an opinion on the quality of the information provision and its security. The Other Party will consistently provide this to the Contracting Authority in case of a recertification.

11.3 The Other Party will provide all necessary cooperation with respect to audits.

Article 12 Liability

12.1 The provisions of Article 26 ARBIT (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.

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

The Hague, [date]	[place], [date]
For the Minister of / State Secretary for [portfolio]	For [Other Party]
[signatory’s name] [signatory’s position]	[signatory's name] [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 Other Party 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 Other Party, 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 Other Party 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 Other Party 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 Other Party 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 Other Party will be attached as an appendix to this Data Protection Agreement.

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

In addition, the Other Party 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 Other Party 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 Other Party 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 Other Party 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 Other Party)". The content of the email must at least contain the information referred to under D of this Schedule. The Other Party 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 Other Party

Upon commencement of this Data Processing Agreement and from Monday to Friday between 08.00 and 17.00 the contact person of the Other Party is:

Contact details Other Party
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 Other Party

Name Other Party
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 Other Party 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).