**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 is an inseparable part of a Contract based on the ARBIT-2022 and can therefore only be concluded in combination with it. Provisions laid down in the Contract such as those concerning confidentiality and liability do not therefore need to be included separately in the Data Processing Agreement. For more information, see the Explanatory notes on using the Model Data Processing Agreement (ARBIT) on Rijksportaal.**

**Please note: Delete these instructions from the final agreement.**

(Date: September 2022)

**Model 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],

hereinafter referred to as ‘the Contracting Authority’,

**and**

2. [contractor’s full name and legal form],

which has its registered office in [place],

legally represented in this matter by

............... *(and ..............)* [signatory’s name],

hereinafter referred to as 'the Counterparty',

jointly referred to as ‘the Parties’;

**WHEREAS:**

* In so far as the Counterparty 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 Counterparty 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 Counterparty.

**AGREE AS FOLLOWS:**

### ****Article 1. Definitions****

Certain terms in this Data Processing Agreement are written with initial capitals. These terms are defined in the ARBIT-2022 or the Regulation, on the understanding that the definitions of a number of terms are geared to the Data Processing Agreement. In addition thereto, the following terms are thus defined below for the purposes of this Data Processing Agreement, regardless of whether they are used in the singular or plural or as verbs or nouns:

1.1 ARBIT-2022: General Government Terms and Conditions for IT Contracts 2022.

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

1.3 EEA: the European Economic Area, comprising all EU countries in addition to 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 disclosure 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 is 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 are not regarded as Recipients; the Processing of that data by those public authorities takes place in compliance with the data protection rules applicable to the purposes of the processing.

1.6 Contract: the agreement between the Contracting Authority and the Counterparty [title] dated [date], reference number [number].

1.7 Personal Data: any data concerning an identified or identifiable natural person that is Processed by the Counterparty 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.

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 Processing by the Counterparty 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 Counterparty 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 Counterparty guarantees compliance with the requirements of the applicable legislation relating to the Processing.

### Article 3. Entry into force and term

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 in so far as the Counterparty has erased or returned all Personal Data and has deleted existing copies in accordance with article 10 of this Data Processing Agreement.

3.3 Early termination of this Data Processing Agreement is not possible.

### Article 4. Scope of the Counterparty's Processing competence

4.1 The Counterparty will Process Personal Data only for, and on the basis of written instructions from, the Contracting Authority, unless the Counterparty is required by a statutory regulation to carry out Processing. In that case the Counterparty will notify the Contracting Authority of such a statutory regulation prior to the Processing, unless that statutory regulation prohibits such notification on important grounds of public interest.

4.2 The Counterparty has no control over the purpose or means of the Processing within the meaning of the Regulation.

### Article 5. Security of the Processing

5.1 Without prejudice to article 2.3 of this Data Processing Agreement, the Counterparty will 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 Counterparty guarantees an appropriate level of security having regard to the risks entailed.

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

5.4 The Counterparty will not Process any Personal Data outside the EEA unless it has obtained express written consent from the Contracting Authority to do so, subject to further conditions if necessary, and barring statutory obligations to the contrary.

5.5 As soon as the Counterparty becomes aware of any illegal or unauthorised Processing of Personal Data or breaches of the security measures referred to paragraphs 1 and 2, it will inform the Contracting Authority without unreasonable delay.

5.6 The Counterparty 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 of the Counterparty's Staff

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

6.2 The Counterparty guarantees that its Staff have undertaken to observe the duty of secrecy referred to in article 17.2 of the ARBIT-2022.

### Article 7. Subprocessor

If the Counterparty, 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.

### Article 8. Assistance concerning rights of Data Subjects

8.1 Taking into account the nature of the processing, the Counterparty will assist the Contracting Authority by means of appropriate technical and organisational measures, in so far as this is possible, in the fulfilment of the Contracting Authority’s obligation to respond to requests for exercising the Data Subject’s rights laid down in chapter III of the Regulation.

8.2 Each of the Parties will bear any costs they incur in connection with paragraph 1.

### Article 9. Personal Data Breach

9.1 The Counterparty 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.

9.2 After reporting an incident as described in paragraph 1, the Counterparty 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 Once the Contract expires or earlier as agreed the Counterparty will ensure that it erases all the Personal Data or returns it to the Contracting Authority, whichever the Contracting Authority prefers, and deletes existing copies, unless statutory regulations require the storage of the Personal Data.

*<****OPTIONAL****>*If the Counterparty is to erase and/or delete copies, it will inform the Contracting Authority as soon as it has done so.

10.2 The Parties may agree retention periods for separate Personal Data or categories of Personal Data. Once the agreed retention period has expired, the Counterparty will ensure the erasure or return and the deletion of copies of the Personal Data concerned unless statutory regulations require the storage of the Personal Data.

10.3 *<****OPTIONAL****>*The Counterparty will [erase or return] the Personal Data within [number] [days/weeks] following the expiry of the Contract or earlier as agreed, failing which the Counterparty will owe a penalty of €[amount] per day, up to a maximum of €[amount]. Payment of the penalty does not affect the Counterparty’s obligation under this paragraph or its liability for compensating any loss caused by the breach.

10.4 *<****OPTIONAL****>* The Personal Data will be returned in the format and manner stipulated by the Contracting Authority.

**OR**

10.4 *<****OPTIONAL****>* The Personal Data will be returned as follows: [file format], [manner in which it is to be returned, specifying security measures] to [address].

### Article 11. Obligation to supply information and audit obligation

In order to demonstrate that the obligations under this Data Processing Agreement have been and are being fulfilled by the Counterparty, the Contracting Authority may, in accordance with article 5 of the ARBIT-2022, request information or have an audit performed.

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

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

For the Minister / State Secretary of / for ……….. [Counterparty’s name]

[name of portfolio]

.......

[signatory]

[*signatory’s name*] [*signatory’s name*]

### Schedule 1. Processing Personal Data

This Schedule must in any case specify:

Overview of Processing

|  |  |
| --- | --- |
| The subject matter/nature and purpose of the Processing |  |
| The type of Personal Data |  |
| The categories of Personal Data |  |
| The categories of Data Subjects |  |
| The categories of Personal Data Recipients |  |
| Location of Personal Data Processing |  |
| ……… |  |

Subprocessor(s)

|  |  |
| --- | --- |
| Subprocessor’s name and contact details |  |
| Subprocessor’s commercial register number |  |
| The subject matter/nature and purpose of the Processing |  |
| The type of Personal Data |  |
| The categories of Personal Data |  |
| The categories of Data Subjects |  |
| The categories of Personal Data Recipients |  |
| Location of Personal Data Processing |  |
| …….. |  |

The information in the Controller’s records, obligatory under Article 30 of the Regulation, can be used to complete this schedule.

### Schedule 2. Appropriate technical and organisational measures

The standards and measures that the Counterparty must uphold or adopt to ensure the security of Processing must be specified in this schedule. Reference may be made to documents setting out standards and measures, such as the programme of requirements or request for tenders.

### Schedule 3. Agreements regarding Personal Data Breaches

The agreements on how the Counterparty will inform the Contracting Authority of Personal Data Breaches must be specified in this schedule.

**Ministry procedure**

[To be filled in by the Contracting Authority]

**Minimum information that the Counterparty must supply**

|  |
| --- |
| Date and time of discovery of suspected Personal Data Breach |
| Nature of the Personal Data Breach  |
| The Personal Data and Data Subject(s)  |
| Probable consequences of the Personal Data Breach |
| Measures proposed or taken by the Counterparty to tackle the Personal Data Breach including, where relevant, measures to limit the possible negative consequences of the incident. |