**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 Purchase and Supply Contract.**

**NB: Delete these instructions from the final agreement.**

(Date: May 2018)

Contents

[Article 1 Terms 2](#_Toc527018337)

[Article 2 Object of this Data Processing Agreement 3](#_Toc527018338)

[Article 3 Entry into force and duration 3](#_Toc527018339)

[Article 4 Scope of the Supplier's Processing competence 3](#_Toc527018340)

[Article 5 Security measures 4](#_Toc527018341)

[Article 6 Duty of Confidentiality of the Supplier's Staff 4](#_Toc527018342)

[Article 7 Subprocessor 4](#_Toc527018343)

[Article 8 Assistance concerning rights of Data Subjects 4](#_Toc527018344)

[Article 9 Personal Data Breach 4](#_Toc527018345)

[Article 10 Return or erasure of Personal Data 5](#_Toc527018346)

[Article 11 Obligation to supply information and audit obligation 5](#_Toc527018347)

[Schedule 1 Processing Personal Data 6](#_Toc527018348)

[Schedule 2 Appropriate technical and organisational measures 7](#_Toc527018349)

[Schedule 3 Agreements regarding Personal Data Breaches 8](#_Toc527018350)

**Data Processing Agreement (ARIV 2018)**

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 Purchaser’

**and**

2. [full name and legal form of the Supplier],

which has its registered office in [place],

legally represented in this matter by

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

hereafter referred to as ‘the Supplier’,

jointly referred to as 'the Parties';

**WHEREAS:**

* Insofar as the Supplier processes Personal Data for the Purchaser in the context of the Contract, the Purchaser, under article 4 (7) and (8) of the Regulation, qualifies as a controller for the Processing of Personal Data and the Supplier 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 Supplier.

**AGREE AS FOLLOWS:**

### ****Article 1 Terms****

Certain terms in this Data Processing Agreement are written with initial capitals. These terms are defined in article 1 of the General Government Purchasing Conditions 2018 (ARIV 2018). In derogation therefrom or in addition thereto, the following terms are defined below for the purposes of this Data Processing Agreement:

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

1.2 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.

1.3 Contract: the Contract between the Purchaser and the Supplier [name] dated [date], reference number [number].

1.4 Personal Data: any data concerning an identified or identifiable natural person that is processed by the Supplier for the Purchaser in the context of the Contract.

1.5 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).

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

1.7 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 Supplier 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 Supplier 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 Supplier 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 Supplier has deleted or returned all Personal Data 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 Supplier's Processing competence

4.1 The Supplier will process the Personal Data exclusively for and on the basis of written instructions from the Purchaser barring statutory rules to the contrary that apply to the Supplier.

4.2 If any instruction as referred to in paragraph 1 is deemed by the Supplier to contravene a statutory rule on data protection, the Supplier will notify the Purchaser of this prior to Processing, unless a statutory rule prohibits such notification.

4.3 If the Supplier is obliged to disclose Personal Data on the basis of a statutory rule, it will inform the Purchaser immediately, if possible prior to the disclosure.

4.4 The Supplier will have no control over the purpose of the Personal Data Processing and the means used for that Processing.

### Article 5 Security measures

5.1 Without prejudice to article 2.3 the Supplier will implement the technical and organisational security measures described in Schedule 2 to this agreement.

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 Supplier guarantees an appropriate level of security having regard to the risks entailed.

5.3 At the express written request of the Purchaser, the Supplier will adopt additional measures to ensure the security of the Personal Data.

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

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

5.6 The Supplier will assist the Purchaser in ensuring compliance with the obligations under articles 32 to 36 inclusive of the Regulation.

### Article 6 Duty of Confidentiality of the Supplier's Staff

6.1 The Personal Data is confidential as referred to in article 8.1 of the ARIV 2018.

6.2 At the request of the Purchaser, the Supplier will show that its Staff have undertaken to observe the duty of confidentiality referred to in article 8.2 of the ARIV 2018.

### Article 7 Subprocessor

7.1 In performing the Contract, the Supplier may engage another processor only after it has obtained the Purchaser’s written permission. This permission – to which the Purchaser may attach further conditions – will not be withheld without good reason.

7.2 The fact that the Purchaser has given its permission does not affect the Supplier’s responsibility and liability for discharging the obligations imposed on it under the Contract, and for discharging the obligations imposed on it as an employer under tax, health insurance and social insurance law.

If the Supplier, with due regard for the provisions of this article, engages another processor to carry out Processing activities for the Purchaser, 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

The Supplier will assist the Purchaser in fulfilling its obligation to respond to requests from Data Subjects to exercise the rights set out in chapter III of the Regulation.

### Article 9 Personal Data Breach

9.1 The Supplier will inform the Purchaser, 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 the first paragraph, the Supplier will also inform the Purchaser 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, the Supplier will erase the Personal Data or return it to the Purchaser, whichever the Purchaser prefers. The Supplier will delete any copies, barring statutory rules to the contrary.

10.2 ***<OPTIONAL>*** The Supplier will [erase or return] the Personal Data within [number] [days/weeks] following the expiry of the Contract, failing which it will be fined €[amount] per day, up to a maximum of €[amount].

10.3 ***<OPTIONAL>*** The Personal Data will be returned to the Purchaser in the format and manner stipulated by the Purchaser.

**OR**

10.3 ***<OPTIONAL>*** The Personal Data will be returned as follows: [File format], by [means of return] to [address].

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

11.1 The Supplier will provide all necessary information to show that the obligations set out in this Data Processing Agreement have been and will be fulfilled.

11.2 The Supplier will provide all necessary cooperation with respect to audits.

11.3 ***<OPTIONAL>*** The Purchaser will have an independent party carry out an audit once every […].

 **OR**

11.3 ***<OPTIONAL>*** Once every [...], and no later than [date], the Supplier will provide the Purchaser with a report issued by an independent external expert in which that expert expresses an opinion on compliance.

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 [Supplier]

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

### Schedule 1 Processing Personal Data

This Schedule must in any case specify:

|  |  |
| --- | --- |
| The nature and purpose of the Processing activities |  |
| The type of Personal Data |  |
| The categories of Personal Data |  |
| The categories of Data Subjects |  |
| The categories of Personal Data recipients |  |

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 Supplier must 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 Supplier will inform the Purchaser of Personal Data Breaches must be specified in this schedule.

**Ministry procedure**

-----

**Minimum information that the Supplier must supply**

|  |
| --- |
| 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 Supplier to tackle the Personal Data Breach including, where relevant, measures to limit the possible negative consequences of the incident. |