



Data Processor Agreement Stichting Nederlandse Publieke Omroep

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Date: [complete]

Data Processor Agreement Stichting Nederlandse Publieke Omroep
Based on Data Processor Agreement ARVODI-2018

Notes: For an explanation of the provisions in the Data Processor Agreement ARVODI-2018 we refer to the general notes accompanying that document. Where this Data Processor Agreement diverges from the standard Data Processor Agreement ARVODI-2018, you will find the explanation here, as needed.

These notes are not part of the Contract. In case of doubt about the meaning and/or interpretation of the Data Processor Agreement, the content of these notes may help to determine meaning. The notes do not prejudice any agreement the parties may have reached in any concrete case.

The provisions are not negotiable, since the tenders must be made on identical terms and conditions.

Contract Number: [complete].

The undersigned:

1. Stichting Nederlandse Publieke Omroep, with its registered offices in Hilversum on the Bart de Graaffweg 2 (1217GP), here duly represented by [complete], hereafter referred to as: The Contracting Authority,

and

2. [Full name and legal form of Contractor], with its (registered) offices in [location], Here duly represented by [complete] hereafter referred to as: The Contractor,

hereafter jointly referred to as: The Parties

WHEREAS:

- On [date], the Contracting Authority concluded an a Contract (hereafter referred to as: the Contract) with the Contractor with regards to carrying out activities in the field of [complete], reference: [complete]
- In the course of carrying out said activities, Personal Data as referred to in Article 4 sub 1 of the Algemene Verordening Gegevensbescherming (EU) 2016/679 (General Data Protection Regulations) may be processed
- In as far as the Contractor will be Processing Personal Data on behalf of the Contracting Authority in the course of executing the Contract, in accordance with Article 4 sub 7 and 8 of the Regulations, the Contracting Authority qualifies as Data Controller and the Contractor qualifies as Data Processor
- The Parties wish to record their agreements about the Processing of Personal Data by the Contractor in this Data Processor Agreement, as referred to in Article 28 third section of the Regulations.

AGREE AS FOLLOWS:

Article 1 Definitions

The capitalised terms appearing above and below in this Data Processor Agreement shall have the following definitions:

- 1.1 Data Subject: the person to whom an item of Personal Data refers.

- 1.2 Security Incident: a breach of security of the Personal Data which are processed by the Contractor in the execution of this Data Processor Agreement.
- 1.3 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.
- 1.4 Agreement: the Agreement between the NPO and [complete] d.d.[date] regarding [complete], with reference [reference].
- 1.5 Personal data: information relating to an identified or identifiable natural person which the Contractor processes on behalf of the Contracting Authority in the context of the Agreement.
- 1.6 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)
- 1.7 Data Processor Agreement: this agreement including considerations and associated appendices.
- 1.8 Processing: means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, 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

Article 2 Subject of this Data Processor Agreement

- 2.1 This Data Processor Agreement contains the arrangements concerning the Processing of Personal Data by the Contractor within the context of the Agreement.
- 2.2 The nature and purpose of the Processing, the type of Personal Data and the (categories of) Personal Data, Data Subject(s) and recipients are described in Appendix 1.
- 2.3 The Contractor guarantees to implement appropriate technical and organisational measures in such a manner that Processing will meet the requirements of the Regulation and ensure the protection of the rights of the Data Subject(s).
- 2.4 The Contractor guarantees to meet the requirements of the applicable laws and regulations regarding the Processing of Personal Data.

Article 3 Commencement, duration and termination of the Data Processor Agreement

- 3.1 This Data Processor Agreement shall commence on the date on which the Contract related to this Data Processor Agreement comes into force.
- 3.2 This Data Processor Agreement terminates after and to the extent that the Contractor has deleted or returned all Personal Data in accordance with Article 10.
- 3.3 Neither of the Parties may terminate the Data Processor Agreement in the interim.

Article 4 Scope of Contractor's Processing Authorisation

- 4.1 The Contractor shall Process the Personal Data exclusively on behalf of the Contracting Authority and shall follow all Contracting Authority instructions regarding the Processing, except for deviating legal obligations applicable to the Contractor.
- 4.2 If in the opinion of the Contractor, an instruction as referred to in the first section contradicts a legal obligation regarding data protection, he will inform the Contracting Authority prior to Processing.
- 4.3 The Contractor has no control over the purpose and means for Processing the Personal Data. To the extent that this Data Processor Agreement does not stipulate otherwise, the Contractor shall not take decisions about the use of the Personal Data, their transfer to third parties or the duration of storage of the Personal Data.
- 4.4 The Contractor is not permitted to provide Personal Data to parties other than the Contracting Authority, unless at the written request of the Contracting Authority, or with written permission by the Contracting Authority. The Contractor is obliged to confirm in writing that such transfer has taken place, whereby he must provide an exact description of the Personal Data transferred, the Data Subject(s), the recipient(s) and the time of transfer.
- 4.5 If the Contractor must transfer data because of a legal obligation, the Contractor shall verify the legal basis of the request and the identity of the requester and immediately, if possible prior to the transfer, inform the Contracting Authority on this matter. The Contractor is obliged to confirm in writing that such transfer has taken place, whereby he must provide an exact description of the Personal Data transferred, the Data Subject(s), the recipient(s) and the time of transfer.

Article 5 Security of the Processing

- 5.1 The Contractor shall implement the technical and organisational security measures with regards to the Processing of Personal Data as described in this article and any additional measures as required, to ensure an appropriate level of protection, taking into account the state of the art and the cost of implementation and execution of the measures, with due observance or the risks inherent in the Processing of Personal Data and the nature thereof.
- 5.2 The Contractor shall record and implement a security policy with regards to the Processing of Contracting Authority's Personal Data, in which the vulnerabilities of the relevant system or systems are mapped and in which measures are described to monitor these and to prevent, solve and limit risks.
- 5.3 The Parties acknowledge that ensuring an appropriate degree of protection may continually force the taking of additional security measures. The Contractor shall ensure a security level appropriate to the risk.
- 5.4 If and in as much as the Contracting Authority explicitly so requests in writing, the Contractor shall take additional measures intended to secure the protection of the Personal Data.
- 5.5 The Contractor shall not process the Personal Data outside the EEA (European Economic Area) unless he has obtained explicit written permission from the Contracting Authority prior to the Processing and except in case of deviating legal obligations. In any case, this shall be on condition that if Article 45 of the GDPR is not met, the Contractor shall use the unamended standard contractual clauses (SSCs) without additions, as set by the European

Commission or the Data Protection Authority and that these shall be signed and complied with.

- 5.6 The Contractor shall inform the Contracting Authority without unreasonable delay as soon as he has been informed of unlawful Processing of Personal Data or a Personal Data Breach or breaches of security measures as listed in the first and second section.
- 5.7 The Contractor shall assist the Contracting Authority in meeting the obligations arising from Articles 32 to 36 of the Regulation.

Article 6 Confidentiality

- 6.1 The Contractor is committed to keeping confidential all Personal Data which he processes as a result of this Data Processor Agreement.
- 6.2 If and to the extent the Contracting Authority explicitly so requests in writing, the Contractor shall implement special measures with regards to the Personal Data there indicated in order to ensure their confidentiality. Such measures may include the destruction of the relevant Personal Data as soon as the need for the Contractor to have knowledge of them has disappeared.
- 6.3 In the Contractor's agreements with the Contractor's staff, conditions shall be included that those persons shall maintain confidentiality in accordance with Article 6.1 and 6.2 with regard to all Personal Data they Process in the course of their work for the Contractor. The Contractor shall guarantee to the Contracting Authority that the conditions referred to shall be adhered to by the relevant persons.
- 6.4 On termination of the Contract and this Data Processor Agreement the obligations arising from this article shall remain in force.

Article 7 Sub-processor

- 7.1 The Contractor shall not engage third parties to execute the Processing ('Sub-processor') without applying for permission from the Contracting Authority at least 4 weeks before engaging any Sub-processor. The Contractor shall not be permitted to engage Sub-processor without prior permission if this should lead to Processing of Personal Data outside the European Economic Area (EEA). The Contracting Authority may attach further conditions to his permission to engage third parties. In any case, this shall be on condition that if Article 45 of the GDPR is not met, the Contractor shall use the unamended standard contractual clauses (SSCs) without additions, as set by the European Commission or the Data Protection Authority and that these shall be signed and complied with.
- 7.2 If the Contractor engages a Sub-processor, the Contractor shall conclude, in writing, agreements with the Sub-processor as set down in this Data Processor Agreement. The Contractor shall remain responsible for compliance with the provisions in this Data Processor Agreement by the Sub-processor.

Article 8 Assistance to Support Data Subject(s) rights

The Contractor shall provide the Contracting Authority with his full assistance in complying with the obligations arising from the Regulation within the legal period, and in particular the Data Subject(s) rights, such as, but not limited to, a request to access, correct, add, remove or restrict Personal Data and complying with an objection duly granted and recorded.

Article 9 Reporting Security Incidents

- 9.1 The Contractor shall inform the Contracting Authority without unreasonable delay, and in any case at the latest within 24 hours after being informed of a Security Incident in accordance with the agreements as set down in Appendix 2. In addition, the Contractor shall take all reasonable measures to terminate, prevent or limit the Security Incident and further unlawful Processing or breaches, without prejudice to the Contractor's obligation to compensate the Contracting Authority for any damages as a result.
- 9.2 After the Contractor has reported a Security Incident to the Contracting Authority as set down in this article, the Contractor shall keep the Contracting Authority informed of new developments around the Security Incident and of the measures the Contractor is taking to limit the consequences of the Security Incident and prevent its recurrence. In addition, the Contractor shall assist the Contracting Authority fully in complying with the duty to report, listed in Article 33 of the Regulation, to the Data Protection Authority and the Data Subject(s). Agreements on how the Contractor shall inform the Contracting Authority are included in Appendix 2.
- 9.3 Any costs incurred as a result of this article shall be at the expense of the party incurring the costs.
- 9.4 Without prejudice to the provisions in Article 82 of the Regulation, the Contractor shall be liable for any administrative fine, penalty or damages suffered by the Data Subject(s) or the Contracting Authority and imposed by a supervisory authority or the court, to the extent that the administrative fine, penalty or damages are the result of culpable deficiency by the Contractor in complying with his obligations.

Article 10 Returning or Deleting Personal Data

- 10.1 Upon termination of the Contract and the Data Processor Agreement, all Personal Data, copies and processes as well as all data media which contain or shall contain Personal Data, copies or processes thereof, shall be returned at the first request by the Contracting Authority or provided to the Contracting Authority (or a third party designated by the Contracting Authority) or destroyed, as the Contracting Authority shall determine, except in case of deviating legal regulations.
- 10.2 If the Contracting Authority does not explicitly request destruction, the Contractor shall destroy the Personal Data independently on termination of the agreed storage term listed in Appendix 1. In addition, on termination of this Data Processor Agreement, the Contractor shall extend every assistance in order to transfer the activities regarding the Processing of the Personal Data to the Contracting Authority or a successor Contractor and this shall be done in such a way that the continuity of service provision shall be safeguarded to the fullest extent possible from the moment of transfer. Any costs incurred as a result of such efforts on the part of the Contractor shall be at the expense of the Contracting Authority to the extent they are not included in the agreed prices and remuneration of the Contractor as a result of executing the Agreement.

Article 11 Obligation to Inform and Monitoring

- 11.1 The Contractor shall provide all necessary information to demonstrate that the obligations in this Data Processor Agreement have been and are being met.
- 11.2 The Contractor shall provide the following to the Contracting Authority once per year, at the latest on 31 December:

- A statement by its legal representative, giving an assessment of compliance with this Data Processor Agreement.
 - An overview of the measures taken by the Contractor regarding the technical and organisational security measures and any areas of concern. If the Contractor intends to change the technical and organisational security measures, the Contractor shall notify the Contracting Authority as soon as a proposal to do so has been formulated.
- 11.3 If the Contracting Authority suspects that the Contractor is not complying with his obligations arising from this Data Processor Agreement, he can inspect (or cause to be inspected) the Contractor or any Sub-processor(s) engaged by the Contractor to check on compliance with the agreed technical and organisational security measures as well as the measures listed in Appendix 2, needed to meet the notifying obligation referred to in Article 33 of the Regulation.
- 11.4 The Contractor shall extend all reasonably necessary cooperation with this inspection and ensure that any Sub-processors engaged by him shall also extend any reasonably necessary cooperation.
- 11.5 Carrying out an inspection shall not lead to any delay in the activities to be carried out by the Contractor in the context of the Contract and this Data Processor Agreement. If this should unexpectedly be the case, the Parties shall enter discussions in order to find a solution as quickly as possible.
- 11.6 Any costs associated with the inspection shall be at the expense of the Contracting Authority unless the inspection shows that the Contractor or a Sub-processor is culpably deficient in meeting his obligation(s) under this Data Processing Agreement and/or the Contract.
- 11.7 The Contractor shall carry out the recommendations for improvement provided by the Contracting Authority within the term to be determined by the Contracting Authority.

Article 12 Intellectual Property

All (intellectual) property rights - including copyright and database rights - to the collection of Personal Data, copies or processes of the same, shall at all times be retained by the Contracting Authority or his licensor(s).

Article 13 Applicable Terms and Conditions

- 13.1 General delivery conditions or other general or special conditions by the Contractor are not applicable to this Data Processor Agreement and are explicitly rejected by the Contracting Authority.
- 13.2 This Data Processor agreement acts as an addition to the Contract. In case of conflict between provisions in this Data Processor Agreement and the Contract, the provisions in the Data Processor Agreement shall prevail.

Article 14 Continuing Obligations

The Contractor's obligations which due to their nature must continue on termination of the Contract and Data Processor Agreement, shall remain in force for an indefinite period. This

shall in any case apply - but is not limited to - the transfer, detection of unauthorised Processing, inspection and confidentiality, indemnification also as further detailed in Articles 6, 10, 11.3 and 11.4, and 15 and applicable law.

Article 15 Indemnification

The Contractor shall indemnify the Contracting Authority against all damages and costs suffered by the Contracting Authority and with regard to all claims by third parties against the Contracting Authority (including those due to an administrative fine, penalty imposed by a supervisory authority or court, or damages suffered by Data Subject(s), as listed in Article 9.4), which are caused by culpable deficiency by the Contractor in meeting his obligations under this Data Processor Agreement.

Article 16 Fine

In addition to the provisions to be further detailed regarding liability in other terms and conditions which are applicable to the relationship between the Contracting Authority and the Contractor, in case of breach of the obligations resting on him, his staff and any Sub-processors as a result of this Data Processor Agreement, the Contractor shall be liable for a fine of € 10,000 per event.

Article 17 Final Provisions

- 17.1 Deviations from this Data Processor Agreement are binding only to the extent they have been agreed explicitly in writing between the Parties.
- 17.2 This Data Processing Agreement is subject to Dutch law.
Any disputes shall be placed before the court of Amsterdam which shall have exclusive jurisdiction.

Thus agreed on the latter of the two dates listed below, and signed in duplicate,

Hilversum, [date]

[location], [date]

Stichting Nederlandse Publieke Omroep

[Name of Contractor]

On behalf of the same,
[Position of person signing]

[Name of person signing]

[Position and name of person signing]

Appendix 1. The Processing of Personal Data (Article 2.2)

This Appendix should further specify at least the following:

- A description of the activities within whose context the Personal Data are to be processed, if necessary by referring to the Contract.

- A description of the (categories) of Personal Data and the Data Subjects concerned.

- A description of the Processing which will take place, including as appropriate the processing of Personal data, transporting Personal Data, storing Personal Data and creating a back-up, by the Contractor.

- A description of the purpose or purposes for which the Personal Data are processed.

- A description of the maximum duration for storing the Personal Data.

- Indicate whether any of the below mentioned types of data are processed and if yes, which:
 - Race or ethnic background
 - Health
 - Data related to a person's sexual behaviour or sexual orientation
 - Membership of a union
 - Political opinions, religious or philosophical beliefs
 - Genetic or biometric data
 - Criminal information

- Describe the country in which the Personal Data are to be processed (NB! This may be the country where the Contractor has access to the Personal Data)

- Overview of known Sub-processors [optional]

Appendix 2: Measures in Relation to a Security Incident and Duty to Notify Data Breaches (Article 9)

1. The Contractor shall notify the Contracting Authority immediately of any Security Incident, which will enable the Contracting Authority to determine whether he is obliged immediately to report the Security Incident as a Breach in relation to Personal Data within the context of Article 33 of the GDPR to the Data Protection Authority and, as necessary, notify the Data Subject(s).
2. The Contractor shall inform the Contracting Authority at the latest within 24 hours after the Contractor or his Sub-processor(s) or third parties have identified a Security Incident. This obligation shall be valid 24 hours per day, 7 days per week.
3. The Contracting Authority should be notified of the Security Incident by submitting the below information via email to: informatiebeveiliging@npo.nl.
4. The information to be provided consists of reporting the fact that a Security Incident has taken place. If the Contracting Authority assesses the Information provided by the Contractor and determines that the Security Incident qualifies as a Personal Data Breach, the information below shall be provided in addition:
 - A summary of the events in relation to the Personal Data Breach
 - It must be shown whether the Personal Data Breach took place at the Contractor's, at the Sub-processor's, and in as far as is relevant, the identity of the Sub-processor
 - The date and time of the period in which the Personal Data Breach was identified and has taken place
 - The (suspected) cause of the Personal Data Breach
 - The nature of the Personal Data Breach out of one of the following options: access to, copying, altering, deleting or destroying, theft of personal data.
 - A description of the type of Data Subject(s), the minimum and maximum number of (potential) Data Subject(s) and, if known, the identity of these persons and the presence of Data Subject(s) in other EU countries
 - The categories of Personal Data which (may) have been compromised by the Personal Data Breach, such as: name, address and town data, telephone numbers, email addresses or other addresses for electronic communication, access or identification data (for instance log in name/password or customer number), financial data (for instance account number, credit card number), Dutch national citizen number (BSN) or social security number, copies of passport or copies of other identification documents, gender, date of birth and/or age, special personal data (e.g. race, ethnicity, criminal data, political persuasion, union membership, religion, sex life, medical data) or other personal data.
 - A description of whether the Personal Data concerned are encrypted in any way, anonymised, pseudonymised, hashed or able to be deleted remotely
 - What is the consequence (already known and/or expected) for the persons concerned, e.g. stigmatisation or exclusion, damage to health, exposure to (identity) fraud, exposure to spam or phishing or other
 - The technical and organisational measures concerned or to be taken, in order to limit the effects of the Personal Data Breach and to prevent recurrence
 - Contact details for following up on the report and for obtaining more information about the Personal Data Breach.
5. In addition, the Contractor shall inform the Contracting Authority of his own accord about all other relevant developments surrounding the Personal Data Breach which happen after the time of providing the information listed in Appendix 2. The Contractor must respond

within a reasonable period to additional questions by the Contracting Authority with regards to the Personal Data Breach.

6. As soon as a Personal Data Breach has been identified, the Contractor must at his own expense and risk take all measures reasonably required to limit the damaging effects of the Personal Data Breach and to prevent recurrence.
7. The Contractor shall grant the Contracting Authority full cooperation and information as reasonably necessary to adequately inform the Data Protection Authority Respectively the Data Subject(s) about the cause and scope of the Personal Data Breach. If the circumstances give rise to the same, the Contractor shall provide the Contracting Authority with access to the Contractor's system and/or the system of any Sub-processor the Contractor may have engaged.
8. The Contractor shall not be permitted independently to report the Personal Data Breach as referred to in this Appendix to the Data Protection Authority and the Data Subject(s).