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Personal Data Processing Agreement

Contract number: 202111047 / WOZ2210282

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague, represented by the Minister of Economic Affairs and Climate Policy, 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, under article 4 (7) and (8) of the Regulation, 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, paragraph 3 of the Regulation, wish to record their agreements on the Processing of Personal Data by the Contractor.

AGREE AS FOLLOWS:

Article 1 Definitions

- 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 Contracting Authority and the Contractor concerning the Integrated Ground Model for IJmuiden Ver Wind Farm Sites V -VI, including the ARVODI-2018 concluded on.....[date]
- 1.4 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.
- 1.5 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 considerations 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 Contractor 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 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 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 Contractor's Processing competence

- 4.1 The Contractor will Process the Personal Data exclusively for and on the basis of written instructions from the Contracting Authority barring statutory rules to the contrary that apply to the Contractor.
- 4.2 If any instruction as referred to in paragraph 1 is deemed by the Contractor to contravene a statutory rule on data protection, the Contractor will notify the Contracting Authority of this prior to Processing, unless a statutory rule prohibits such notification.
- 4.3 If the Contractor is obliged to disclose Personal Data on the basis of a statutory rule, it will inform the Contracting Authority immediately, if possible prior to the disclosure.
- 4.4 The Contractor will have no control over the purpose or means of the Personal Data Processing.

Article 5 Security measures

- 5.1 Without prejudice to article 2.3 of this Data Processing Agreement, the Contractor 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 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. The Contracting Authority will cover all reasonable costs incurred by the Contractor in fulfilling its obligations under this Article 5.3, including payment for time spent by the Contractor to fulfil such obligations according to the Contractor's standard hourly rates.
- 5.4 The Contractor 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 Contractor discovers any illegal or unauthorised Processing or infringements of the security measures referred to paragraphs 1 and 2, it will inform the Contracting Authority without unreasonable delay.
- 5.6 The Contractor 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 – Contractor's Staff

- 6.1 The Personal Data is confidential as referred to in article 13.1 of the General Government Terms & Conditions for Public Service Contracts (ARVODI-2018).
- 6.2 At the request of the Contracting Authority, the Contractor will show that its Staff have committed themselves to observe the duty of confidentiality referred to in article 13.2 of the ARVODI-2018.

Article 7 Subprocessor

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.

Article 8 Assistance concerning rights of Data Subjects

- 8.1 The Contractor will assist the Contracting Authority in fulfilling its obligation to respond to requests from Data Subjects to exercise the rights set out in chapter III of the Regulation.
- 8.2 The Contracting Authority will cover all reasonable costs incurred by the Contractor in fulfilling its obligations under this Article 8, including payment for time spent by the Contractor to fulfil such obligations according to the Contractor's standard hourly rates.

Article 9 Personal Data Breach

- 9.1 The Contractor 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 the first paragraph, the Contractor 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, the Contractor will erase the Personal Data or return it to the Contracting Authority, whichever the Contracting Authority prefers. The Contractor will delete any copies, barring statutory rules to the contrary. Irrespective of the foregoing, the Contractor is entitled to keep one copy of the Personal Data to protect its interests in relation to the other Party or to comply with current legislation or public authority decisions or where the Personal Data is embedded in computer backup archives which are not practicably able to be returned, destroyed or erased.
- 10.2 The Contractor will erase the Personal Data within 52 weeks following the expiry of the Contract and notify the Contracting Authority thereof, failing which it will be fined €250 per day, up to a maximum of [the total contract value].

Article 11 Obligation to supply information and audit obligation

- 11.1 The Contractor 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 Contractor will provide all necessary cooperation with respect to audits.
- 11.3 The Contractor agrees to let the Contracting Authority carry out an audit at any time for the duration of the contract or afterwards insofar as this is necessary to ensure compliance with this Contract. The Contracting Authority has the right to have the audit be carried out by an independent external expert.

Article 12 Liability

- 12.1 The Parties' liability is governed by the Contract.
- 12.2 The Parties' liability in damages under this Data Processing Agreement is governed by the Contract.

Article 13 Governing law and jurisdiction

- 13.1 Any claim or dispute arising from or in connection with this Agreement must be settled by a competent court of first instance in the same jurisdiction as stated in the Contract.

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

The Hague, [date]

[place], [date]

For the Minister of Economic Affairs
and Climate Policy, and commissioned by

For [Contractor]

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

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

Schedule 1 Processing Personal Data

Processor, including contact details	E: T Sec:
Contact details for representative of the Processor	E: T Sec:
Contact details Privacy Officer	E: T Sec:
The nature and purpose of the processing	- Reading stakeholder comments and information that were received as part of the project that the Contracting Authority is working on. - To interpret the origin of the information that Contractor will be given in the course of performing this contract. - To contact the persons who provided the information that Contractor will be given in the course of performing this contract.
Legal basis	Contractual
Justification for legitimate interest	
(The categories of) Data Subjects	Employees of different companies. Advisors of companies.
(The categories of) Personal Data concerning the Data Subject	- Names - Contact information, including e-mail addresses, telephone numbers, social media accounts, company addresses
(The categories of) Personal Data Recipients	Contractor and his or her employees or sub-contractors
(Statutory) period of storage of the Personal Data	For the duration of this contract and any extensions thereof
Source of the Personal Data	Contracting Authority
Rights of the Data Subjects	The Data Subjects have the right to - Right to access, rectification, or deletion of the Personal Data or limitation of the Processing - Right to data portability - Right to object against the Processing - Right to complain with a supervisory authority
Are the data being transferred to a country outside of the EU	
Will the Personal Data be used by the Processor for other purposes than those described in this Schedule	No

Schedule 2 Appropriate technical and organisational measures

The standards and measures that the Contractor must adopt to ensure the security of Processing are 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.

Technical measures

- Contractor is responsible for ensuring that all of the software he or she uses on the equipment used to store the information containing the Personal Data is updated as soon as new software becomes available.
- Contractor will encrypt the information containing the Personal Data with an AES256 encryption scheme or better.

Organisational measures

- Contractor will ensure that access to the information containing the Personal Data is limited to the persons that are part of the project team as described in Contractor's offer that formed the basis for this Contract.
- Contractor will minimise the amount of physical copies he or his employees make of the information containing the Personal Data.

Schedule 3. Arrangements on Breaches involving Personal Data

This appendix contains arrangements on how the Contractor will inform the Contracting Authority of Breaches involving Personal Data.

Background

The data breach reporting obligation has been in force since 1 January 2016. This reporting obligation requires organisations (both businesses and government agencies) to report any serious data leaks to the Dutch Data Protection Authority (Autoriteit Persoonsgegevens) without delay. Under specific circumstances, they are obliged to report the data leak to the data subjects (the individuals whose personal data are involved in the leak) as well.

As carrying out an assignment for the Ministry of Economic Affairs and Climate Policy will involve processing of personal data, you are obliged to report any breach of the security to the Contracting Authority immediately after it is discovered and to cooperate fully in complying with the statutory reporting obligation.

Cooperation

The Data Breach Response Team (DRT) coordinates the handling of the data leak for the Ministry of Economic Affairs and Climate Policy as well as the reporting thereof to the Dutch Data Protection Authority and – where necessary – the data subjects. You must cooperate fully by providing the DRT with all the requested information.

Among other things, the Data Breach Response Team will request the following information:

- details of your organisation (name of organisation, address, postal code, place of business, Chamber of Commerce registration);
- details of the person reporting the breach (name, position, email address, telephone number(s));
- details of the data leak (short summary of the incident in which there was a breach of the security of personal data, the minimum and maximum number of people to whom the breach of the personal data pertains, a description of the group of people whose personal data were involved in the breach, the moment that the breach took place (exact date or period), the moment that the breach was discovered);
- information on the nature of the breach (reading, copying, alteration, deletion, destruction, theft);
- type of personal data (address details, telephone numbers, email addresses or other addresses for electronic communication, access or identification details, financial details, citizen service number, passport or copies of other identity documents, gender, date of birth and/or age, special personal data such as ethnicity, political views, ideological beliefs, trade union membership, genetic details, biometric identification, health, sexual life and criminal details);
- technical and organisational measures which have been taken to deal with the data leak and prevent further breaches;
- technical security measures (whether the personal data were partially or fully encrypted, hashed or otherwise rendered incomprehensible or inaccessible to unauthorised persons at the time of the data leak and how the personal data were rendered incomprehensible or inaccessible).

Even if not all of the above information is available yet, the DRT must be contacted without delay.

Examples of data leaks:

- loss or theft of a laptop, smartphone, flash drive, and so on, also if it concerns encrypted data;
- accidental publication of personal data;
- sending an email with names in the CC rather than in the BCC if the addressees have nothing to do with each other, or sending an email to the wrong address;
- being the victim of a phishing email or hack;
- illegal transfer of usernames/login codes or having access to files which you are not (or no longer) authorised to access;
- destruction of a data base containing personal data as a result of human error, without the presence of a back-up.

DRT contact details

Data Processing Agreement Integrated Ground Model for IJmuiden Ver Wind Farm Zone in the Netherlands

E: datalek@minez.nl
T: +31 6 55 493 820

The team is available 24/7.