Annex 9a Concept Data Processing Agreement 2022

Contents

Data Processing Agreement (ARBIT 2022)
Contract number: 202210076

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague,
represented by the Minister of Economic Affairs and Climate,
legally represented in this matter by
René van der Burg, Director Core Processes EU, the Netherlands Enterprise Agency, hereinafter 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:

- 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.

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

1.3 EEA: European Economic Area, meaning all EU countries, including 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 other body, whether or not a third party, to whom/which Personal Data is provided. Public authorities that may receive Personal Data in the context of a special investigation pursuant to Union or Member State law do not count as Recipients, however; the Processing of Personal Data by such public authorities must be consistent with the data protection rules pertaining to the relevant processing purpose.

1.6 Contract: the Contract 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 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 person or legal entity, a government agency, a service or some 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: a natural or legal person, public authority, agency or other body which, acting alone or with others, determines the purposes for which and the manner in which Personal Data are processed; where the purposes and manner of the Processing of Personal Data are determined by European Union or Member State law, the law may also determine the identity of the Controller or the criteria according to which the Controller is designated.

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, 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 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 Other Party.

4.2 If any instruction as referred to in paragraph 4.1 is deemed by the Other Party to contravene a statutory rule on data protection, the Other Party will notify the Contracting Authority of this prior to Processing, unless a statutory rule prohibits such notification.

4.3 If the Other Party is obliged to disclose Personal Data on the basis of a statutory rule, it will inform the Contracting Authority immediately, and if possible prior to that disclosure.

4.4 The Other Party 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 Other Party 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 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 the EEA, unless it has obtained express written approval, with optional further conditions, 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 5.1 and 5.2, it will inform the Contracting 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

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.

Article 8 Assistance concerning the rights of Data Subjects

8.1 The Other Party 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 Parties are each liable for the costs incurred in relation to 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.

9.2 After reporting an incident as described in paragraph 9.1, 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 Once the Contract expires, the Other Party will erase the Personal Data or return it to the Contracting Authority, as instructed by the Contracting Authority. The Other Party will delete any copies, barring statutory rules to the contrary.
In cases where the Other Party is responsible for erasing and/or destroying copies of the data, the Other Party will inform the Contracting Authority as soon as this has been done.

10.2 The Parties may agree specific retention periods for individual Personal Data or specific categories of Personal Data. When the agreed retention period has elapsed, the Other Party erases or returns and deletes copies of the relevant Personal Data, unless statutory rules require the retention of said Personal Data.

10.3 The Other Party will erase the Personal Data within one week, following the expiry of the Contract, failing which it will be fined €100,- per day, up to a maximum of €2.500,-.

Article 11 Obligation to supply information and audit obligation

In order to demonstrate that the obligations set out in this Processor Agreement have been and are being met by the Other Party, the Contracting Authority may request information from the Other Party or give instructions for an audit to be carried out in accordance with article 5 of the ARBIT 2022. Further reference is made here to section 6 of the SLA and H4.3.4. of the Tender Document.

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:

The nature and purpose of the Processing activities	Identity and access management
The type of Personal Data	Account data (names and email addresses of RVO employees)
The categories of Personal Data	Account data
The categories of Data Subjects	Account data
The categories of Personal Data recipients	RVO Functional Management
Location of data processing	Public Cloud

Subprocessor(s)

Name and contact details subprocessor	
Number of as stated in the trade register subprocessor as stated in the trade register	
The type of Personal Data	
The categories of Personal Data	
The categories of Data Subjects	
The categories of Personal Data recipients	
Location of 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

See security requirements in Tender document.
Two-Factor authentication is used for access by NEA employees.

Schedule 3 Agreements regarding Personal Data Breaches

The agreements regarding how the Other Party will inform the Contracting Authority of Personal Data Breaches must be specified in this schedule.

Ministry procedure
Data leaks must be reported to the Data Security Office of the Netherlands Enterprise Agency (RVO) as soon as they become apparent rvoinformatiebeveiliging@rvo.nl.

Minimum information that the Other Party must supply

Date and time of (possible) Personal Data Breach
Nature of the Personal Data Breach
The Personal Data and Data Subject(s) involved
Probable consequences of the Personal Data Breach
Measures proposed or taken by the Other Party to tackle the Personal Data Breach including, where relevant, measures to limit potentially negative consequences of the incident.