



Draft Data Processing Agreement (ARVODI 2018)

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 Judith Arends, Manager CBI/RVO on behalf of the Centre for the Promotion of Imports from developing countries (CBI), 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

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 Public Service Contracts 2018 (ARVODI 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 Contracting Authority and the Contractor [name] dated [date], reference number [number].

- 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 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 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 In addition to article 15 of the ARVODI 2018, and 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.
- 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 of the Contractor's Staff

- 6.1 The Personal Data is confidential as referred to in article 13.1 of the ARVODI 2018.
- 6.2 At the request of the Contracting Authority, the Contractor will show that its Staff have undertaken 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

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.

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 Appendix 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.

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.

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

The Hague, XXXX 2023

[place, date] 2023

For the Minister of Economic Affairs
And Climate Policy, on behalf of
Judith Arends, Manager CBI, of the
Netherlands Enterprise Agency (RVO),

For [Contractor]

Jan van Putten
Team Manager Procurement Office

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

Schedule 1. Processing of Personal Data

This Schedule must in any case specify:

The nature and purpose of the Processing activities	Processing contact data for the CBI Program .
The type of Personal Data	Regular personal data
The categories of Personal Data	Name, Address, phone numbers, e-mail address, status programme CBI
The categories of Data Subjects	1. Representatives of companies in Development Cooperation countries; 2. Representatives of organizations in Development Cooperation countries; 3. Representatives of companies in non-Development cooperation countries (especially importers in the EU/EFTA); 4. Representatives of other organizations in non-Development cooperation countries 5. Suppliers or representatives of suppliers.
The categories of Personal Data recipients	1. Employees RVO/CBI insofar as this is important for accounting for the transactions with the recorded data and for internal company security.

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

Within the Dutch national government, the baseline information security government (BIO) is the basis for the organization of information security. The Contractor's security must at least meet the same requirements as the BIO or ISO27001/2 Standard.

Schedule 3. Agreements regarding Personal Data Breaches

Cause

Since 1 January 2016, the obligation to report data breaches has been in effect. This reporting obligation means that organizations (both companies and governments) must immediately report to the Dutch Data Protection Authority as soon as they have a serious data breach. And sometimes they also have to report the data breach to the Data Subjects (the people whose Personal Data has been leaked).

Since the Contractor will process personal data in the context of executing the Agreement, the Contractor has the obligation to report this to the Client without undue delay if a Personal Data Infringement (Art. 33 paragraph 2 GDPR) is established.

Providing cooperation

The Client coordinates the handling of the data breach to and the notification to the Dutch Data Protection Authority and, if necessary, to Data Subjects. The contractor must fully cooperate by providing all information requested by the client.

The Client will, among other things, request the following information from the Contractor:

- Details of his organization (name of organization, address, postal code, place of business, registration professional or trade register);
- Details of the reporter (name, position, e-mail address, telephone number(s));
- Data about the data breach (brief summary of the incident in which there was a Personal Data Security Breach, minimum and maximum number of Data Subjects affected by the Personal Data Breach, a description of the group of Data Subjects to which the Breach relates, when the Infringement occurred (exact date or period), when the Infringement was discovered);
- Data on the nature of the Infringement (reading, copying, changing, deleting, destroying, theft);
- Type of Personal Data (name and address details, telephone numbers, e-mail addresses or other addresses for electronic communication, access or identification data, financial data, BSN, passport or copies of other proofs of identity, gender, date of birth and/age, special personal data (such as: ethnicity, political opinions, philosophy of life, trade union membership, genetic data, biometric identification, health, sexual life and criminal law data);
- Which technical and organizational measures have been taken to tackle the data breach and to prevent further Breaches?;
- Technical protection measures (were the Personal Data (partially) encrypted, hashed or otherwise made incomprehensible or inaccessible to unauthorized persons at the time of the discovery of the data breach? In what way were the Personal Data made incomprehensible or inaccessible in whole or in part?).

Even if the above information is not yet known, the Contractor will immediately contact the Client's contact person/point of contact for data breaches.

Examples of data breaches

- Loss or theft of a laptop, smartphone, USB stick, etc. Even when it concerns encrypted data!
- Accidental disclosure of Personal Information.
- Sending an e-mail with names in the CC instead of BCC when the recipients have nothing to do with each other. Or sending an email to the wrong address.
- Being a victim of a phishing email or hack.
- The illegal passing on of usernames/login codes or having access to files for which you are not (or no longer) authorized.
- Destruction of a database of Personal Data due to human error while missing a backup.

To be completed by the Contractor:

Contact details for data breaches

E:

T:

Availability:

To be completed by the Contracting Authority:

Contact details for data breaches

E: rvoinformatiebeveiliging@rvo.nl

Availability: Monday to Friday from 07:30 to 18:30 CET

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

Minimum information that the Contractor 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 Contractor to tackle the Personal Data Breach including, where relevant, measures to limit the possible negative consequences of the incident.