

1. Standard Data Processing Agreement (DPA) for Municipalities

Data processing agreement for the performance of <title of main contract>

The Municipality of <name of municipality>, of which <the Municipal Executive/the Municipal Council> is the data controller, hereinafter: 'Controller', duly represented in this matter by <Mr/Ms> <name>, <job title>

and

<Company>, established in <place of residence>, Chamber of Commerce number <number>, hereinafter: 'Processor', duly represented in this matter by <Mr/Ms>, <name>, <job title>,

hereinafter referred to separately as: 'Party' and collectively as: 'Parties',

Whereas:

- a) On <date>, the Parties formed the <title of main contract>, hereinafter: 'Main Contract', under which the Processor will provide the following service or services to the Controller: <list of service or services>;
- b) As part of the performance of the Main Contract, the Processor will Process Personal Data for the Controller;
- c) The processing of Personal Data by the Processor is governed by the General Data Protection Regulation (GDPR) and the Dutch GDPR Implementing Act (*Uitvoeringswet AVG*);
- d) In the present data processing agreement ('Data Processing Agreement'), the Parties wish to set out the following arrangements, in addition to the GDPR and the GDPR Implementing Act, concerning the Processing of Personal Data;

Agree as follows:

Article 1 Definitions

- 1.1 Terms used in the Data Processing Agreement that are defined in the GDPR and the GDPR Implementing Act carry the same meaning as defined there.
- 1.2 Annexes: attachments to the Data Processing Agreement that are an intrinsic part of the Data Processing Agreement.

Article 2 Effective date and duration

- 2.1 Unless the Parties agree otherwise, the Data Processing Agreement comes into effect when the Main Contract is formed.
- 2.2 The Data Processing Agreement terminates at the moment that the Processor finishes Processing Personal Data under the Main Contract and the arrangements concerning the return and/or erasure of Personal Data have been fulfilled.

Article 3 Subject of the Data Processing Agreement

- 3.1 The Processor will Process the Personal Data made available by or via the Controller only as required by the Controller for the purposes of performing the Main Contract and only in accordance with the Controller's written instructions, unless the Processor is obliged to Process the Personal Data in accordance with an applicable Union or Member State law. Where this applies, before proceeding to Process the Personal Data, the Processor will notify the Controller accordingly, unless that law prohibits such notification by reason of important grounds of public interest.
- 3.2 The Processing procedures to be carried out by the Processor are described in Annex 1.

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Article 4 Substantive arrangements

4.1 Security measures

The Processor will ensure appropriate technical and organisational measures to properly secure the Personal Data, as described in Article 32 of the GDPR. The manner in which the Processor will demonstrate the appropriate technical and organisational measures is described in Annex 2.

4.2 Audits

If the Processor's compliance with the arrangements under the Data Processing Agreement and its Annexes is audited by a certified auditor, the Processor will cooperate in whatever way is necessary, unless the Processor has demonstrated, by means of valid certification that is periodically reviewed by an accredited institution, that it is compliant with the arrangements made. The costs of such audits will be payable by the Controller (both its own costs and the Processor's costs), unless the auditor identifies one or more shortcomings of more than minor importance on the Processor's part to the detriment of the Controller.

4.3 Processing outside the EEA

The Processor may Process (or give instructions to Process) Personal Data outside the European Economic Area if the conditions laid down in Articles 45 or 46 of the GDPR are satisfied. The Processor must notify the Controller before any instance of Processing outside the EEA.

4.4 Confidentiality

Persons working for the Processor (or a subprocessor) and the Processor (or subprocessor) itself must treat the Personal Data with which they work as confidential. Accordingly, the persons working for the Processor and subprocessors have signed non-disclosure agreements, or are otherwise bound in writing by the confidentiality obligation.

4.5 Subprocessors

The Processor will list the subprocessors that are known at the time of forming the Data Processing Agreement in Table 3 of Annex 1. The Controller hereby gives its general consent for engaging the services of subprocessors. Once the work has commenced, the Processor will inform the Controller of any plans to engage the services of new subprocessors. Articles 28.2 and 28.4 of the GDPR apply with full effect where subprocessors have been engaged.

4.6 Data Subject rights

If a Data Subject invokes his or her rights as described in Articles 12 to 22 of the GDPR, the Processor will help the Controller to make a decision on those rights within the time prescribed by law.

4.7 Data Protection Impact Assessments and prior consultation

Whenever the Data Controller so requests, the Processor will cooperate in a Data Protection Impact Assessment (DPIA) and prior consultation, as described in Articles 35 and 36 of the GDPR.

Article 5 Personal Data Breaches

5.1 If the Processor identifies or suspects a Personal Data Breach, it will report this to the Controller without undue delay, but no later than within 24 hours. The Processor will report, in so far as this is known, the presumed cause of the Breach or suspected Breach, the category of Personal Data, the category of Data Subjects and the number of Data Subjects.

5.2 In the event of a Breach, the Processor will take all measures without undue delay to remedy the Breach, minimise the consequences and prevent further Breaches.

5.3 The Processor will keep a detailed log of the Breaches and the measures taken in response to Breaches. The Controller will be given access to that log if and when it so requests.

5.4 The Controller will decide whether the Breach must be notified to the supervisory authority and/or the Data Subject. The Processor will give the Controller whatever support is necessary in connection with the notification to the supervisory authority and/or the Data Subject.

Article 6 Liability

6.1 Any limitations of liability agreed in the Main Contract also extend to the Data Processing Agreement.

Article 7 Termination of the Data Processing Agreement

- 7.1 The Parties must include arrangements in the Main Contract about termination of the Main Contract, and the return and deletion of Personal Data as a result.
- 7.2 The confidentiality obligation remains in force after the Data Processing Agreement has ended.

Article 8 Other provisions

- 8.1 This agreement is governed by Dutch law. Any and all disputes, including disputes that only one Party considers to be such, in the first instance will be referred to the competent court specified in the Main Contract.

Signatures

Agreed and signed in duplicate,

Effective date: <.....>

Municipality <name of municipality>

The Mayor of <name of municipality>

represented by: <name, job title>

signed in: <.....>

signed on: <.....>

<organisation's name>

represented by: <name, job title>

signed in: <.....>

signed on: <.....>

Annex 1: List of personal data to be processed

1. Name of Processing procedure, purposes, categories of Data Subjects, categories of Personal Data and where applicable transfers to third countries

Name of Processing procedure	Purposes of Processing	Categories of Data Subjects	Categories of Personal Data (including special categories of Personal Data)	Transfers to third countries	Transfer tool	Additional measures (if applicable)

2. Contact details

Liaison officer at the Data Controller (note: including outside office hours)	Name: Gert-jan Bremer, Privacy Officer Contact details: +31 682091748 privacy@derondevenen.nl Name: Patrick Zuiderwijk, Ciso Contact details: +31 620354146 ciso@derondevenen.nl
Liaison officer at the Data Processor (note: including outside office hours)	Name: Contact details:
Contact details for IBD	Telephone number: +31 (0)70 204 55 11 Email address: privacy@vng.nl

Note: If the information in the tables above changes, the Parties must notify each other as soon as possible.

3. Subprocessors

Subprocessor's name and contact details	Chamber of Commerce no.	Outsourced Processing procedures	Application

Annex 2: Demonstration of appropriate level of security

☐ Security standard

- ☐ The Data Processor works in accordance with a generally accepted standard for information security, specifically:
(specify which standard, e.g. NEN7510, NEN/ISO 27001, PCI/DSS) and is/is not certified in accordance with this standard.
- ☐ The Data Processor works in accordance with a generally accepted Dutch government standard, for example the BIO or a similar standard, specifically:
.....
- ☐ The Data Processor works in accordance with another standard, specifically:
.....

Adequacy

The adequacy of the information security is evidenced by the following:

- ☐ The Data Processor has provided an up-to-date and valid certificate and statement of applicability (VVT);
- ☐ Reports of periodic external verification such as audits, pentests or TPMs (for example ISAE3xxx SOC type II). ;
- ☐ An Assurance Report (TPM) issued by an auditor affiliated with the Dutch Order of Registered EDP Auditors (NOREA);
- ☐ Internal verification or statements concerning the security measures as described below (in line with the approach set out in Chapter 4.4 of the BIO, an ICV):
.....

Note: The certification/periodic external verification/audits or internal verification/descriptions show or indicate that the security is appropriate for the Processing procedure or procedures described in Annex 1.

Adoption of approved code of conduct

- ☐ The Data Processor has adopted a code of conduct approved by a supervisory authority, namely
.....

This annex is optional:
Only attach as an annex if the parties have explicitly opted for this!

Annex 3: Relevant GIBIT 2020 articles

Article 13. Liability

- 13.1 A party who has failed in the performance of its obligations, or acts wrongfully with regard to the other party, is liable to the other party for the loss/damage which the other party suffers or may suffer.
- 13.2 In so far as performance is not permanently impossible, or the obligation ensues from wrongful act or constitutes compensation, paragraph 1 shall only apply subject to the provisions in Article 20.9 on breach.
- 13.3 The liability for personal injury and property damage referred to in paragraph 1 and loss ensuing therefrom is limited to an amount of € 1,250,000 per event. Related events are deemed one event.
- 13.4 The liability for other loss/damage is limited to ten times the Annual Fee per event. The total liability per year is nevertheless never more than twenty times the Annual Fee (regardless of the number of events). Related events are deemed one event.
- 13.5 The limitations of liability set out in this article shall lapse:
- i) in the case of compensation claims of third parties as a result of death or personal injury and/or;
 - ii) if there has been intent or gross negligence on the part of the other party or its Personnel; and/or
 - iii) in the case of breach of intellectual property rights as referred to in Article 17;
 - iv) with regard to fines imposed by the supervisory authority:
 - 1. in so far as those fines could also have been directly imposed on the Vendor, but were not imposed; and
 - 2. on the condition that the Client:
 - a) immediately notifies the Vendor in writing of an investigation started by a supervisory authority that can lead to a fine as well as about both the existence and the contents of the imposed fine; and
 - b) fully includes the Vendor in presenting a defence to such fine or the part of such fine to be attributed to the Vendor.
- 13.6 All obligations, including those pursuant to tax, health care and social security legislation with regard to the Vendor's Personnel, are at the Vendor's expense. The Vendor shall indemnify the Client against any related liability. The above-mentioned limitations of liability do not apply to this indemnification.

Article 20. Suspension, termination and cancellation

Consequences of termination

- 20.14 Upon termination of the Agreement(s), on any grounds whatsoever, the Vendor shall immediately return or remove all documents, books and other items (including data and information carriers) which the Client has provided to the Vendor. The foregoing applies equally in the event of premature termination.

Article 21. Audit right and cooperation with audits at the Client's

Audit right

- 21.1 The Client is entitled to have the Vendor's compliance with the essential obligations under the heading of the Agreement, the GIBIT 2020 and the related agreements (SLA, processing agreement, etc.), as well as the accuracy of submitted invoices, audited by an independent expert third party who is subject to a duty of confidentiality within a reasonable period of time.
- 21.2 Before executing an audit the Client shall first request the necessary information from the Vendor on the basis of the preceding paragraph.
- 21.3 The audit shall only take place if the Client – even after answering the request for information referred to in the preceding paragraph – has reasonable doubts about the performance of the obligations by the Vendor, or if the Client has some other legitimate interest in the audit (for example a statutory duty, instruction of the supervisory authority).
- 21.4 The Vendor shall provide all reasonably expected cooperation in connection with such an audit. The Vendor shall in that framework at least provide insight into all relevant data and background information which can be relevant in the framework of the aforementioned audit. The Vendor shall also allow access to the location where the services are provided.
- 21.5 The Client guarantees that the third party referred to in the first paragraph shall comply with any regulations applied by the Vendor. If the audit cannot be executed (in full) because of the aforementioned regulations, this shall be at the Vendor's risk.
- 21.6 The costs of this audit shall be borne by the Client (both the Client's own costs and the Vendor's costs), unless the third party establishes one or more shortcomings, which are not minor shortcomings, of the Vendor which are detrimental for the Client.

Cooperation with audits at the Client's

- 21.7 In so far as the Client is dependent on the Vendor for the execution of (legally mandated) audits, the Vendor shall fully cooperate with the execution of these audits. The costs of this cooperation shall be borne by the Client.

Article 22. Switch, limited continuation, transfer and extended use

Exit plan

- 22.1 On the Client's first request, the Parties shall draw up an exit plan which records what should happen in preparation for and in execution of the work described in this article. Articles 5.2 and 5.3 apply to the exit plan mutatis mutandis.
- 22.2 The work referred to in this article – i.e. switch (Articles 22.3 et seq.), limited continuation (Articles 22.6 et seq.), transfer (Article 22.8) and limited extension (Article 22.9) – shall be executed in accordance with the exit plan and the provisions in the Agreement and the GIBIT 2020, at the Vendor's regular rates applicable at that time.

Switch to similar ICT Performance

- 22.3 Upon termination of the Agreement(s) on whatever grounds, on the Client's first request the Vendor shall do whatever is reasonably necessary to ensure that a new vendor or the Client itself can effect a similar ICT Performance on behalf of the Client without impediments (with the exception of the disclosure of the Software source code).
- 22.4 The reasonable measures in the framework of the switch to another vendor/another system referred to in the preceding paragraph are in any event understood to mean (at the Client's election):
 - i) compliance with the obligations under Article 18;
 - ii) destruction of the data for which the Client is responsible (in return for presentation of proof of destruction);
 - iii) the technical disentanglement and dismantling of (a part of) the ICT Performance
- 22.5 In deviation from Article 22.2 the aforementioned services shall be provided free of charge if there has been breach by the Vendor. The work referred to under 22.4ii) shall in any event be executed free of charge on request.

Limited continuation of ICT Performance

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- 22.6 The Vendor hereby states to be willing upon termination of the Agreement(s) – on whatever grounds – on the Client’s first request:
- i) to effect a new ICT Performance or limited continuation of the existing ICT Performance which will enable the Client to continue to view the data stored with the current ICT Performance; and
 - ii) to (continue to) provide a limited form of Maintenance in respect of the ICT Performance referred to in the preceding paragraph (i.e. within the framework of the limited functionality referred to in the preceding paragraph).
- 22.7 The following applies with regard to the duration and costs of the ICT Performance referred to in the preceding paragraph:
- i) the duration is at least such that the Client can comply with the statutory administrative obligations;
 - ii) the costs are reasonably proportional to the original costs for the entire ICT Performance (pro rata to the reduced functionality), on the understanding that the charges of necessary extensions of Third-Party Software can be passed on in full.

Transfer of ICT Performance

- 22.8 The Client is entitled to transfer the ICT Performance in whole or in part, including all related User Rights and all claims in the framework of Maintenance, on the same terms and conditions (including User Rights remaining the same in scope) to a municipal scheme or other entity with a public function in the framework of an outsourcing of a part of the activities of the Client. The Vendor shall fully cooperate with the aforementioned transfer. The Vendor is not entitled to charge costs for the transfer as such, it is entitled to charge the costs of any additional work to be executed. Third-Party Software is only transferrable in so far as such is not in contravention of the law or the applicable terms of the licence (cf. Article 19.5).

Extended use

- 22.9 The Vendor furthermore states to be willing to allow the Client if so desired to extend the use of the ICT Performance after the termination date for a reasonable period of time, if the work has not been completed in time in accordance with the Exit plan. Toward this end a fee shall be charged pro rata to the most recently applicable user fees (whereby necessary extensions of Third Party software can be passed on in full), unless the non-timely completion of the Exit work can be attributed to the Vendor (the extension shall be free in such case).