

Processor agreement

Parties:

TSD IT b.v. **hereinafter processor**

<Name customer> **hereinafter controller**

Jointly **hereinafter parties**

Whereas:

- A. The controller and processor have an agreement with regard to the purchase of hardware / software and/or services of the processor by the controller;
- B. The controller is responsible for the processing of the personal data which are trusted to the controller and has the processing under its supervision;
- C. The processor of personal data processes on behalf of the controller;
- D. The controller and processor close this processor agreement (hereinafter processor agreement) in which the rights and obligations regarding the processing of the personal data are regulated, based on Article 28 GDPR.
- E. This processor agreement is valid to all established agreements between controller and processor as well as on new (sub) agreements of service between the parties, unless explicitly agreed in writing.

Article 1. Scope of the processor agreement

1.1 Controller requests the processor to process data on behalf of the controller. The types of processing are summed up but not limited to these described in article 1.3. In case there are other activities than described in article 1.3 then these will be specified per order.

1.2 Personal data will be exclusively used in the interest of executing the agreement as described in points A through E. The processor does not have the rights to individually make decisions regarding the processing of the personal data of the controller.

1.3 Processor has, depending on the services purchased, access to personal data of the controller for:

- Designing/implementing/maintaining software and hardware systems
- Executing data conversions
- Placing a new version, build or patch, acute fix or customised solution in an ICT environment
- Offering support, whether or not directly in the ICT environment
- Making a back-up
- Transferring an ICT environment
- Viewing and/or retrieving of databases (to the ICT environment of the processor)
- Establishing/maintaining/altering links to web services
- Monitoring/updating/restarting servers
- Providing training, whether or not in the ICT environment of the controller

Article 2. Providing data

2.1 Personal data will never be made available to third parties unless the processor has received explicit permission from the controller or if the processor is obliged on the basis of legislation to provide personal data to third parties. In that situation, the processor will inform the controller unless this is not allowed according to the mentioned legislation.

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Article 3. Sub processors

3.1 Processors can outsource activities to a third party (to be called: sub processors). Sub processors with which the processors can collaborate with are displayed on the website of the processor: <https://www.tsd.nl/en/aboutTSD>.

3.2 In case the processor wants to use another party than described in the preceding article, then this will be expressed through a publication on <https://www.tsd.nl/en/aboutTSD>.

3.3 In case of outsourcing activities to a sub processor, the processor imposes the same responsibilities and obligations to the sub processor as agreed upon between the controller and the processor within this agreement.

Article 4. Measures of the processor

4.1 Processor has implemented internal organisational and technical measures to their best efforts to guarantee the availability, integrity and confidentiality of the personal data with the aim of protecting personal data against loss or any form of unlawful processing. Processor will maintain these measures while taking new developments into account.

4.2 Processor handles a privacy statement within the provided services and monitors its compliance.

4.3 Every employee of the processor commits to confidentiality and signs a confidentiality agreement.

4.4 With the development of new parts and products, attention is paid by the processor to the protection of personal data in relation to this new development.

4.5 Processor maintains measures for the protection of the business continuity of its own organisation in case of calamities.

Article 5. Data breach

5.1 Both parties will inform each other as soon as possible, but at the latest 48 hours after discovery, in the case of (the suspicion of) an incident or a data breach, no matter the nature, that can have or has an impact on the data that falls within the scope of the agreement between processor and controller.

5.2 A report of an alleged data breach at one of the parties is at all times offered to the management of the controller or processor. In case the report has not been sent to the aforementioned (function), then the provision is not fulfilled under article 5.1.

5.3 In case the infringement is a data breach according to the Data Breach Notifications, the processor will give its best effort in helping the controller, within the range of influence of the processor, to undo or limit the data breach.

5.4 Processor will follow, within their own responsibility in dealing with data breaches, the own procedure Data Breach Notification as the primary guideline.

5.5 In case of a data breach controller will take care of reporting to the Dutch Data Protection Authority if necessary by the law. Processor reserves the right, in case of inflicted damage as a result of an incorrect report, to hold the controller liable.

Article 6. Privacy rights of those involved

6.1 Processor will cooperate with the controller in the execution of a request to review the personal data on the basis of article 15 of the GDPR. A request will at all times have to be submitted in writing by the controller.

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6.2 Processor will cooperate with the controller in the execution of a request for rectification of the personal data on the basis of article 16 of the GDPR. A request will at all times have to be submitted in writing by the controller.

6.3 Processor will cooperate with the controller in the execution of a request for transfer of the personal data on the basis of article 20 of the GDPR. A request will at all times have to be submitted in writing by the controller.

6.4 Processor will not save personal data and other data longer than necessary in respect to the execution of the services agreed upon conform the description in article 1.1

6.5 Processor will no longer save personal data of the controller in case a specific (individual) request has been made on the 'Right of Erasure' conform article 17 of the GDPR. A request will at all times have to be submitted in writing by the controller.

6.6 In case of termination of the agreement between processor and controller, the processor will provide, if requested by the controller, copies of (digital) available data in a structured and common manner after which the personal data at the processor shall be destroyed within 4 weeks after termination unless this is not possible due to other mandatory provisions.

Article 7. Audit

7.1 Controller is at all times allowed to audit the processing of the personal data at the processor unless this results into a breach relating to regulations, or other provisions related to data protection.

7.2 A request to audit on compliance to what has been agreed upon in this agreement can be performed by the controller or by a third party engaged by the controller. Any costs of a third party controlling the audit (certified author), at the request of the controller, will be charged to the controller.

7.3 A request to audit the processing of data has to be submitted at all times by writing after which an appointment will be made for carrying out the audit. Processor will present the controller the opportunity to (let them) carry out its audit within a reasonable term but no later than 2 months. This audit will take place under the guidance of an employee of the processor.

Article 8. Liability

Processor is, in accordance with article 82 of the GDPR, only liable for damage caused by processing in case that during the processing the obligations specifically directed at the processor by the GDPR were not met or where it has acted outside or contrary to lawful instructions of the controller.

Article 9. Contact information and authorisation

9.1 Processing, as presented in article 1 of this processing agreement, requires permission of the controller. Processor will, in case of doubt, apply an extra authorisation check on the already obtained permission or not carry out the order in case of reasonable doubt. Processor will inform the controller about this.

9.2 Management and personnel of the controller are authorised in name of the controller to give permission for carrying out processing. Management and personnel of the processor are authorised in the name of the processor to accept processing orders. An order for processing needs to be submitted by writing, preferably by email.

9.3 In case of a Data Breach Notification or unlawful execution within the scope of this agreement, the authorised in name of the controller should turn to the management of the processor. If in these situations the report is not sent to the management, the report is considered not valid.

Article 10. Term and termination

10.1 This processor agreement is in effect as long as the processor has the task from the controller to process personal data on the basis of the agreement between controller and processor.

10.2 After termination of the agreement between controller and processor, the processor agreement will also end automatically. The termination of the agreement has to be submitted in writing at all times. The transfer of data will take place conform as described in article 6.6.

Article 11. Invalidity, applicable law and jurisdiction

11.1 In case any provision of this processor agreement is invalid or otherwise not enforceable, all other provisions remain in full effect. Parties will then agree upon a provision that approaches the scope of the invalid provision as close as possible.

11.2 This processor agreement is subject to the Dutch law.

11.3 Any dispute in connection with this processor agreement or the application of it will be submitted to the competent court of the Northern Netherlands District.

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