

Data Processing Agreement GDPR

PARTIES

[NAME], located at [postal code] [place] on the [street] and registered at the Chamber of Commerce under the number [number], (the “Client”)

and

Perspectivity located at [postal code] [place] on the [street] and registered at the Chamber of Commerce under the number [number], (the “Data Processor”).

The Client and the Data Processor are each identified as a “Party” and together as “Parties”:

WHEREAS:

- A. On [date], the Parties entered the [name agreement] (“Agreement”) about [short description of services to be provided by the Data Processor];
- B. Data Processor is responsible for processing data as described in Annex 1 (“Data”);
- C. In the execution of the Agreement, the Data Processor will process certain Data for the Client;
- D. Client and Data Processor enter this Data Processing Agreement based on article 28 of the GDPR in which all the rights and obligations concerning Data processing are arranged, particularly with regards to safety
- E. This Data Processing Agreement will be included as an attachment to this Agreement.

IT IS AGREED AS FOLLOWS:

Article 1. Scope of Agreement

1. Client hereby instructs the Data Processor to process the Data on behalf of the Client in the manner described in Annex 1 in accordance with the provisions of this Data Processing Agreement.
2. Data Processor shall only process the Data to the instructions of the Client in accordance with the instructions in the Data Processing Agreement, in particular those in Annex 1. Data Processor confirms that it will not process the Data for any other or its own purposes.

3. Data Processor has no control over the purpose and means of processing the Data.
4. Client may give additional, written instruction to the Data Processor in the event of adjustments or changes in the applicable Personal Data protection regulations.
5. Data Processor shall only process Data in the European Economic Area.

Article 2. Processing of Client Personal Data and Confidentiality

1. Data Processor guarantees that it will only process Personal Data for the benefit of the Client to the extent that this is necessary for the provision of the services under the main Agreement between Data Processor and Client. Other processing will only be performed on the explicit written instruction of the Client or if there is a legal obligation to do so, only after informing the Client. Informing the Client is omitted when this would be in conflict with the law. In no case shall the Data Processor process Personal Data for its own purposes.
2. Data Processor shall comply with all reasonable instructions of the Client in connection to the processing of Personal Data. Data Processor shall immediately inform the Client if, in its opinion, instructions of the Client are in conflict with applicable legislation with regards to the processing of Personal Data.
3. When processing Personal Data, the Data Processor will comply with this Data Processing Agreement, the GDPR and other applicable laws and regulations, such as the guidelines for the protecting of Personal Data published by the Dutch Data Protection Authority on 19 February 2013 (<http://wetten.overheid.nl/BWBR0033572/>).
4. Data Processor shall oblige the persons who are employed by Perspectivity, or who perform work for them, to observe secrecy with respect to all that they may become aware of in connection with the execution of the Data Processing Agreement. If this is not already contractually stipulated for the aforementioned persons, the Data Processor shall impose a confidentiality obligation on these persons with respect to the Data of which they will become aware. This obligation shall be recorded in writing and a copy shall be made available for inspection at the Client's request.
5. Data Processor shall process the Personal Data of the Client logically separated from Personal Data that it processes for itself or on behalf of third parties.

Article 3. No further provision

1. Data Processor shall not share the Data with or provide them to third parties under any circumstances unless Data Processor has obtained prior written consent or is required to do so under mandatory law. If mandatory law requires Data Processor to share the Data with or provide them to third parties, Data Processor shall inform the Client thereof in writing and without delay, unless this is not permitted under said law.

Article 4. Security precautions

1. Taking into account the applicable regulations for the protection of Personal Data, the state of the art and costs of implementation, the Data Processor shall take technical and organisational security measures to ensure the availability, integrity and confidentiality of the Data and to secure the Data against loss or any form of unlawful processing. The security measures taken or to be taken by the Data Processor are described in Annex 2 of this Data Processing Agreement.



2. The security measures referred to in Article 4.1 shall include at least:
 - a) Measures to ensure that only authorised personnel have access to the Personal Data for the purposes set out in Annex 1.
 - b) Measures where the Data Processor permits its employees and/or subcontractors to access Personal Data only through accounts on their name, where the use of such accounts is properly logged and where the accounts concerned allow access only to the Personal Data to which the access is necessary for the individual concerned;
 - c) Measures to protect Personal Data against accidental or unlawful destruction, accidental loss or alteration, unauthorised storage processing, access or disclosure;
 - d) Measures to identify weaknesses with regard to the processing of Personal Data in the systems used for the provision of services to the Client;
 - e) Measures to guarantee timely availability of the Data;
 - f) Measures to destroy the Personal Data immediately upon termination of the Agreement;
 - g) the other measures that Parties have agreed to in Annex 2 and in the Agreement.
3. Data Processor works in accordance with ISO27001 and ISO27002 and has implemented an appropriate written security policy for the processing of Personal Data.

Article 5. Compliance monitoring

1. Data Processor shall actively monitor for breaches of the security measures and report the results of this monitoring to the Client.
2. Data Processor is obliged to provide the Client and/or auditors hired by the Client with access to (relevant parts of) the spaces, systems and/or servers in or through which the data processing takes place and shall provide the Client and/or the auditors hired by the Client with all relevant information.
3. Upon the Client's first request, the Data Processor will provide the Client with a report informing it of the status of security measures as described in Article 4.2 and Annex 2, any incidents or data breaches as described in Article 6 that have occurred and any security risks regarding the Data.
4. Data Processor and Client may agree on further security measures in response to the report referred to in Article 5.3.

Article 6. Data breach

1. As soon as possible after the Data Processor becomes aware of an incident or data breach of any kind that relates or may related to the Data, the Data Processor will inform the Client of this via the contact details of the Client known to the Data Processor and will provide information about, at least:
 - a) The nature of the incident or data breach
 - b) The Data (possibly) affected
 - c) The identified and expected consequences of the incident or data breach for the Data, and
 - d) The measures the Data Processor has taken and will take.
2. The Data Processor shall, at its own expense, take all measures necessary to limit the damage or possible damage and shall support the Client in notifying the parties involved and/or the authorities.



Article 7. Sub processors

1. If, under the terms of the Agreement, the Data Processor is permitted to subcontract its obligations to third parties, the Data Processor shall impose all the responsibilities and obligations that the Data Processor has under this Data Processing Agreement on the third parties concerned in a Sub-Data Processing Agreement in writing.
2. Prior to the entry into force of this Data Processing Agreement, the Data Processor shall provide the Client with an overview of the sub-processors that have been or will be engaged by the Processor, as well as a copy of the sub-processors' agreements concluded with these sub-processors.

Article 8. Liability

1. In accordance with the provisions of Article 79 of the GDPR, the Data Processor shall be liable for any damage or detriment arising from breaches by the Data Processor of the laws and regulations governing the processing of Data in this context of their activities under this Data Processing Agreement and/or non-compliance by the Data Processor or their subcontractors/sub-processors with obligations under this Data Processing Agreement.
2. The Data Processor shall indemnify the Client and hold the Client harmless from and against any claims, actions, claims of third parties and any fines and penalties imposed by the Personal Data Authority or any other supervisory body as a result of a breach of the laws and regulations and in particular the GDPR or any other attributable breach by the Data Processor and/or its subcontractors/sub-processors in performance of the obligations under this Data Processing Agreement.
3. Data Processor shall ensure that there is adequate liability cover.

Article 9. Duration and termination

1. This Agreement is valid for as long as the Data Processor has the assignment from the Client to process Data based on the Agreement between the Client and the Data Processor. Data Processor shall not keep the Personal Data longer than necessary for the purpose mentioned in Annex 1. If the Personal Data are no longer needed, the Data Processor shall consult the Client regarding the destruction of this Data. Note: The destruction of the Personal Data is separate from the storage of anonymised publications and/or reports.
2. Upon termination of this Data Processing Agreement, the Client has four weeks to request that the Data Processor return to the Client all documents, reports, computer disks and other Data carriers, as well as copies thereof, on or in which Data are located, irrespective of whether the content was produced or created by the Data Processor, the Client or a third party. After expiry of this period, the Data Processor will destroy the Data.
3. In the event of return, the Data Processor shall provide the Data in the form as present at Data Processor. To the extent that the Data are in a computer system or in any other form as a result of which the Data cannot reasonably be provided to the Client, the Data Processor will provide the Client with an accessible, legible copy of the Data.
4. After termination of the Data Processing Agreement, the Data Processor shall not keep or use any Data in violation of this Data Processing Agreement.
5. As long as the Data Processor has Data in its possession, all restrictions set out in this Data Processing Agreement shall remain in force.



Article 10. Nullity

1. If any provision of this Data Processing Agreement is void or otherwise unenforceable, the other provisions will remain in full force. The parties shall then agree on a provision which approximates the meaning of the void provision as closely as possible.

Article 11. Applicable law and jurisdiction

1. This Data Processing Agreement is governed by Dutch law.
2. All disputes relating to this Data Processing Agreement or its implementation shall be submitted to court.

On behalf of [Client]		On behalf of [Data Processor]
(Autograph)		(Autograph)
Name:		Name:
Function:		Function:
Date:		Date:

Annexes:

1. Overview of Data, purposes and access
2. Overview of security measures taken by Data Processor



Annex 1: Overview of Data, purposes and access

Collection purpose:

To record necessary data for conducting the research as agreed in the Agreement.

What Personal Data will be processed as part of the Agreement:

Client will have Data Processor process the following categories of Personal Data:

- Name and address details
- Marital status
- Date of birth
- Nationality
- Telephone / email details
- Profession / job
- Family composition
- Gender
- Employer(s)
- <Please specify any other categories of Personal Data>

For what purposes are the Personal Data processed?

The Personal Data ticked here will only be used for the provision of services as described in the Agreement.

What is the duration of storage?

The Personal Data will not be stored longer than necessary for the provision of services under the Agreement and will be destroyed by [end date of Agreement] at the latest.



Annex 2: Overview of security measures taken by Data Processor

Data Processor has taken the following measures to protect Personal Data processed:

- Physical measures for access security, including organisational controls
- Logical access control using a password and/or token and/or pin code
- Automatic logging of Data access, including a control procedure
- Responsibilities for information security are allocated
- Changes to Data or information processing are only made under a described change control procedure
- Data Processor shall conduct periodic internal audits to ensure the necessary evidence of compliance with standards and requirements
- Data Processor has coordinated adequate procedures on communication, support and management with external parties such as TransIP (hosting) and acts accordingly
- Established, implemented security policy
- Measures against malicious software
- Safe deposit box for storage of Data files
- Logical access control using 2-factor authentication, biometrics, etc. for administrators
- Automatic logging of Data access, including a control procedure
- Verification of authorisations
- Encryption by encoding Personal Data during transmission
- Encryption by encryption of Data storage
- Business continuity by means of continuity plans and back-up (in (fire)safe locations)

