

## Data processing agreement **example** - Agency

### The Parties,

(i) [CONTROLLER'S NAME], a company having its principal place of business at [ADDRESS] and registered with the [COUNTRY'S] Chamber of Commerce under number [NUMBER], hereby duly represented by [NAME & FUNCTION], hereinafter referred to as: the "Controller";

and

(ii) [AGENCY'S NAME], a company having its principal place of business at [ADDRESS] and registered with the [COUNTRY'S] Chamber of Commerce under number [NUMBER], hereby duly represented by [NAME & FUNCTION], hereinafter referred to as: the "Processor",

hereinafter collectively referred to as 'Parties' and individually 'Party',

whereas,

- the Controller wishes to promote and organize an event;
- the Processor provides services in the entertainment industry, such as promoting and organizing events by order of its customers;
- in relation to Controller's event, the Controller wishes to use the services of the Processor;
- in relation to Controller's event, the Controller chooses to gather personal data of various involved parties and is responsible for such personal data towards the data subjects;
- the Controller wants the Processor to process this personal data in accordance with the agreement, with number: [AGREEMENT NUMBER], as concluded between Parties (hereinafter: the 'Agreement'); -
- the Processor is prepared to process the aforementioned personal data in accordance with the Agreement and this data processing agreement;
- the Controller is hereby deemed to be the responsible Party (data controller) within the meaning of article 4(7) of the General Data Protection Regulation (hereinafter: 'GDPR');
- the Processor is hereby deemed to be the data processor within the meaning of article 4(8) of the GDPR;
- the Parties, having regard to the provisions of article 28(3) of the GDPR, wish to lay down their rights and duties in writing in this data processing agreement,

have agreed as follows,

### Article 1. Terminology

1. The terminology used in this data processing agreement, such as 'processing' and 'personal data', have the meaning as defined in the GDPR.

### Article 2. Processing objectives

1. The Processor undertakes to process personal data on behalf of the Controller in accordance with the conditions laid down in this data processing agreement. The processing will be executed exclusively within the framework of the Agreement, and for all such purposes reasonably related thereto or as may be agreed to subsequently.
2. The Controller undertakes to use Processor's services to process the following categories of personal data: [Add categories].

3. The Controller undertakes to use Processor's services to process personal data from the following categories of data subjects: [Add categories of data subjects].
4. The Controller will notify Processor of the processing purposes, as well as the categories of personal data and data subjects, to the extent these have not already been cited in this data processing agreement. The Processor may use the personal data for quality purposes, such as surveying the data subjects or carrying out scientific or statistical research into the quality of its services.
5. The Processor shall take no unilateral decisions regarding the processing of the personal data for other purposes.
6. All rights pertaining to the personal data processed by the Processor on behalf of the Controller, shall remain with the Controller and/or the concerning data subjects.

### **Article 3. Obligations of the Processor**

1. With regard to the processing referred to in the previous article, the Controller and the Processor will undertake to comply with the applicable privacy legislation such as the GDPR.
2. On request of the Controller and within a reasonable time thereof, the Processor shall furnish the Controller with details regarding the measures it has adopted to comply with its obligations under this data processing agreement.

### **Article 4. Allocation of responsibility**

1. The Processor is solely responsible for the processing of personal data under this data processing agreement, in accordance with the instructions of the Controller and under the (final) responsibility of the Controller. The Processor is not responsible for any other processing operations involving personal data, including the gathering of personal data by the Controller, processing for purposes that the Controller has not reported to the Processor and processing by third parties and/or for other purposes not stated in this data processing agreement.
2. The Controller represents and warrants that it has a valid legal basis to process the relevant personal data and to engage the Processor in relation to such processing of personal data. Furthermore, the Controller represents and warrants that the processing by the Processor is not unlawful and does not infringe any rights of a third party. In this context, the Controller indemnifies the Processor of all claims and actions of third parties related to the unlawful processing of personal data.
3. In case applicable privacy legislation requires a Privacy Impact Assessment to be conducted before the intended processing under the Agreement and this data processing agreement may be carried out, then the Processor shall provide the Controller with assistance to the extent necessary and reasonable. The Processor may charge reasonable costs for the aforementioned assistance.

### **Article 5. Transfer of personal data**

1. The Processor may process the personal data in countries inside the European Union (EU). In addition, the Processor may also transfer the personal data to a country outside the EU, provided that the legal requirements for such transfer have been fulfilled.
2. Upon request, the Processor shall notify the Controller as to which country or countries the personal data will be processed in.
3. Within the framework of the Agreement and this data processing agreement, the Processor is hereby authorised to engage third parties (sub-processors). On request of the Controller, the

Processor shall inform the Controller about which sub-processors are engaged by the Processor. The Processor shall inform the Controller about any planned change in the used sub-processors, in which case the Controller has the right to object (in writing, within two weeks and supported by arguments) to the proposed change in sub-processors.

4. Should the Controller object to such change, then the Parties will jointly endeavour to find a reasonable solution. If Parties cannot come to a solution, then the Processor is allowed to make the planned change in the used sub-processors and the Controller is allowed to terminate the Agreement (including this data processing agreement) on the date that the Processor will actually make the change in the used sub-processors.
5. The Processor undertakes to bind the relevant sub-processors to substantially the same obligations as the Processor is bound to based on this data processing agreement.

#### **Article 6. Security measures**

1. The Processor will endeavour to take adequate technical and organisational measures against loss or any form of unlawful processing (such as unauthorised disclosure, deterioration, alteration or disclosure of personal data) in connection with the performance of processing personal data under this data processing agreement.
2. The Processor will endeavour to ensure that the security measures are of a reasonable level, having regard to the state of the art, the sensitivity of the personal data and the costs related to the security measures.
3. The Controller will only make the personal data available to the Processor for processing if it is assured that the necessary security measures have been taken.

#### **Article 7. Duty to report**

1. In the event of a security breach, the Processor shall, to the best of its ability, notify the Controller thereof without undue delay, after which the Controller shall determine whether or not to inform the data subjects and/or the relevant regulatory authority.
2. A 'security breach' as stated in this article 7 is a breach of Processor's security, leading to (a significant chance of) severe negative consequences for the protection of personal data, as referred to in article 33 and 34 GDPR.
3. If required by law and/or regulations, the Processor shall cooperate in notifying the relevant authorities and/or data subjects. The Controller remains the responsible Party for any statutory obligations in respect thereof.
4. The duty to report a security breach includes in any event the duty to report the fact that a personal data breach has occurred, including details regarding:
  - a. the (suspected) cause of the breach;
  - b. the nature of the breach, including, where possible, the categories and approximate number of data subjects concerned, and the categories and approximate number of data records concerned;
  - c. the (currently known and/or anticipated) consequences thereof;
  - d. the (proposed) solution;
  - e. the measures that have already been taken to address the personal data breach, including, where appropriate, to mitigate its possible adverse effects.

## **Article 8. Handling of requests from data subjects**

1. Where a data subject submits a request to the Processor regarding his/her personal data (for example, to inspect, correct or delete the data, or to receive a copy of the data), the Processor will forward the request to the Controller and the request will then be dealt with by the Controller. The Processor may notify the data subject hereof. On request of the Controller, the Processor will provide assistance with handling such request to the extent necessary and reasonable. The Processor may charge reasonable costs for such assistance.

## **Article 9. Non-disclosure and confidentiality**

1. All personal data processed within the framework of this data processing agreement by the Processor (and/or its sub-processors) on behalf of the Controller is subject to a duty of confidentiality vis-à-vis third parties. The Processor shall bind its employees and/ or sub-processors, who will perform processing activities under this data processing agreement, to an obligation of confidentiality.
2. This duty of confidentiality will not apply in the event that the Controller has expressly authorised the furnishing of such information to third parties, where the furnishing of the information to third parties is reasonably necessary in view of the nature of the instructions and the implementation of this data processing agreement, or where there is a legal obligation to make the information available to a third party.

## **Article 10. Auditing**

1. The Controller has the right to have audits performed by an independent third party bound by confidentiality to check Processor's compliance with this data processing agreement.
2. An audit as mentioned in paragraph 1, may only be undertaken once per calendar year. At least two weeks before an audit can take place, Controller shall inform the Processor of the audit.
3. The Processor shall cooperate with the audit and provide all information reasonably relevant for the audit, including supporting data such as system logs, and employees, as promptly as possible.
4. The findings further to the audit conducted will be assessed by the Parties in mutual consultation and, following on from this, may or may not be implemented by one of the parties or by both Parties together.
5. The costs of the audit, including the costs that the Processor has to make to cooperate with the audit, shall be borne by the Controller.

## **Article 11. Term and termination**

1. This data processing agreement is an integral of the Agreement, which means that this data processing agreement is entered into for the duration set out in the Agreement and that additional provisions in the Agreement and Processor's general terms and conditions, such as the limitation of liability, are also directly applicable to this data processing agreement.
2. After the expiry of this data processing agreement, the Processor will (depending on the choice of the Controller) provide the Controller with the opportunity to obtain a copy of the relevant personal data, or delete the relevant personal data still available on Processor's systems, unless there is a legal obligation for the Processor to retain the data.
3. This data processing agreement may not be terminated in the interim.
4. This data processing agreement may only be amended by the Parties subject to mutual consent.

5. The Processor shall provide its full cooperation in amending and adjusting this data processing agreement in the event of new or changing privacy legislation.

**Article 12. Applicable law and dispute resolution**

1. This data processing agreement and the implementation thereof will be governed by Dutch law.
2. Any dispute arising between the Parties in connection with and/or arising from this data processing agreement will be referred to the competent Dutch court in the district where the Processor has its registered office.
3. In the case of any inconsistency between documents and the appendices thereto, the following order of priority will apply:
  - a. the Agreement;
  - b. this data processing agreement;
  - c. additional conditions, where applicable.
4. Logs and measurements taken by the Processor shall be deemed to be authentic, unless the Controller supplies convincing proof to the contrary.

was signed,

On behalf of the Controller:

On behalf of the Processor:

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Position:

Position:

Date:

Date: