

Data Processing Agreement: Client (Controller) - Auditor (Processor) - GDPR

Parties:

Klant bv, having its registered office at Place, street, postal code, hereinafter to be referred to as the “**Controller**”, “**You**” or “**Your**”, duly represented in this matter by Mr/Mrs Client, in his capacity as Position;

and

Swart&co Accountants, having its registered office at **Startbaan 6 in 1185 XR Amstelveen, the Netherlands**, hereinafter to be referred to as the “**Processor**”, “**We**”, “**Us**” or “**Our**”, duly represented in this matter by Mr/Mrs Partner in its capacity as Partner;

hereinafter jointly to be referred to as the “Parties”, “We” or “We Jointly”;

Whereas:

- A. We have entered into the assignment with You to perform the following services:
- the processing of financial accounting records; and/or
 - the processing of employee salaries; and/or
 - the arranging of the corporate income tax return; and/or
 - an assignment for the performance of specific services, the “Underlying Assignment”,
- in which context We will Process the Personal Data as listed in the Annex pertaining to this Agreement;
- B. In relation to the performance of such Underlying Assignment as well as in respect of the Personal Data that We will Process for that purpose, We will qualify as the “Processor” and You will qualify as the “Controller”. We will set forth Our mutual rights and obligations herein;

The Parties agree as follows:

1. Definitions

This Agreement uses a number of terms. The meaning of such terms is explained below. The terms listed are capitalised in this Agreement. The list below often uses the description of the relevant term as provided by privacy laws and regulations.

Data Subject:	The person to whom the Personal Data relate.
Processor:	A natural or legal person, public authority, agency or other body which processes personal data on behalf of the Controller, without being subject to the Controller's direct authority.
Sub-Processor	Another processor assigned by the Processor to perform specific processing activities on behalf of the Controller.
Controller:	A natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.
Special Personal Data:	These are data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation, as well as personal data regarding criminal convictions and criminal offences or related security measures.
Data Leak/Personal Data Breach:	A breach of security leading to - or reasonably likely leading to - the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.
Third Parties:	Parties other than You and Us and Our Employees.
Data Leak Notification Duty:	The obligation to notify the Data Protection Authority and (in some cases) one or more Data Subjects of Data Leaks.
Employees	Persons who work for You or for Us, either under an employment contract or temporarily hired.
Underlying Assignment:	The assignment as referred to in the recitals under A.
Agreement:	This Data Processing Agreement.
Personal Data:	Any information relating to an identified or identifiable natural person (the "Data Subject") that is processed in the context of the "Underlying Assignment"; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to

an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Sensitive Personal Data:

Personal Data the loss or unlawful Processing of which may lead to (*inter alia*) stigmatisation or exclusion of the Data Subject, damage to health, financial loss or (identity) fraud.

These categories of Personal Data should in any event be deemed to include:

- Special Personal Data;
- Data regarding the Data Subject's financial or economic situation;
- Any (other) information that may lead to stigmatisation or exclusion of the Data Subject;
- User names, passwords and other login data;
- Data that may be abused for (identity) fraud.

Process/Processing:

Any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

GDPR:

General Data Protection Regulation, including the Act implementing such Regulation. The GDPR will replace the Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens*) with effect from 25 May 2018;

2. Applicability and term

- 2.1. This Agreement will apply to any Processing performed by Us as the Processor on the basis of the Underlying Assignment given by You as the Controller.
- 2.2. This Agreement will take effect on the effective date of the Underlying Assignment and will end at such time as We no longer hold any Personal Data that We Process for You in the context of the Underlying Assignment. This Agreement cannot be terminated early.
- 2.3. Articles 6 and 7 of this Agreement will survive termination of the Agreement (or the Underlying Assignment).

3. Processing

- 3.1. We will Process the Personal Data solely in the manner as agreed with You in the Underlying Assignment. We will not perform such Processing any longer or more extensively than necessary for the purpose of performance of such Underlying Assignment. Processing will be performed on Your written instructions, unless We are required to act otherwise pursuant to laws or regulations (for example when weighing whether or not an “unusual transaction” is to be reported in the context of the Anti-Money Laundering and Anti-Terrorist Financing Act (Wwft)).
If We believe that an instruction is contrary to the GDPR, We will immediately notify You.
- 3.2. Processing will be subject to Your responsibility. We do not control the purpose and the means of Processing, and We do not make any decisions on matters such as the use of Personal Data, the retention period for Personal Data Processed for You, or the disclosure of Personal Data to Third Parties. You are to ensure that You have clearly determined the purpose and means of the Processing of the Personal Data. Under no circumstances will We have control of the Personal Data. Should We be under any independent obligation pursuant to legal obligations or the professional rules or rules of conduct applicable to auditors in relation to Personal Data Processing, We will comply with such obligations. A summary of those professional rules and rules of conduct can be found on the website of the Royal Netherlands Institute of Chartered Accountants (www.nba.nl).
- 3.3. You are under a legal obligation to comply with the prevailing privacy laws and regulations. In particular, You are required to determine whether there is a legitimate basis for the Processing of the Personal Data. We will ensure that We comply with the regulations applicable to Us as the Processor in the field of the Processing of Personal Data and the arrangements We have made in this Agreement.
- 3.4. We will ensure that only Our Employees will have access to the Personal Data. The exception to this rule is set out in Article 3.5. We will limit access to Employees for whom access is necessary for their work, and to limit that access to the Personal Data that these Employees actually need for their work. Moreover, We will ensure that the Employees who have access to the Personal Data have received correct and complete instructions on the handling of the Personal Data and that they are aware of the related responsibilities and legal obligations.

- 3.5 . We may engage other processors (Sub-Processors) to perform certain services that may ensue from the Underlying Assignment, for example if such Sub-Processors have specialist knowledge or resources that We do not have. If, as a result of the engagement of Sub-Processors, such Sub-Processors will be Processing Personal Data, We will impose the obligations of this Agreement on such Sub-Processors (in writing). By signing this Agreement, You consent to the engagement of the Sub-Processors listed in the Annex pertaining to this Agreement. We will inform You in advance of the engagement of any other Sub-Processors, giving You the opportunity to object.
- 3.6. To the extent possible, We will assist You in the performance of Your obligations to handle requests from Data Subjects to exercise their rights. Any requests that We receive (directly) from Data Subjects to exercise their rights (for example access, rectification or erasure of Personal Data) will be forwarded by Us to You. You will handle any such requests Yourself, in respect of which, of course, We may assist You if We have access to such Personal Data for purposes of the Underlying Assignment. We may charge costs in that respect.
- 3.7. We will Process the Personal Data within the European Economic Area only, unless We have agreed otherwise with You. We Jointly will record any such agreements in writing or by e-mail. By signing this Agreement, You consent to the forms of Processing outside the EEA listed in the Annex pertaining to this Agreement.
- 3.8. If We receive a request to make Personal Data available, We will do so only if the request has been made by a competent authority for that purpose. Moreover, We will first review whether We believe that the request is binding or whether We are required to comply with the request pursuant to rules of conduct or professional rules. If there are no criminal or other legal impediments, We will notify You of the request. We will try to do so taking into account so short a period as to enable You to bring any remedies that may be available against the disclosure of the Personal Data. If We are permitted to notify You, We will also consult with You as to the procedure for disclosure and the data that We will make available.

4. Security measures

- 4.1. We have implemented the security measures listed in the Annex pertaining to this Agreement; When implementing security measures, the risks to be mitigated, the state of the art, and the costs of the security measures have been taken into account.
- 4.2. You have properly informed Yourself of the security measures implemented by Us and You believe that those measures offer a level of security that is appropriate in relation to the nature of the Personal Data and the scope, context, purposes and risk of the Processing.
- 4.3. We will inform You in the event of changes to any of the security measures.
- 4.4. We will offer appropriate safeguards for the application of the technical and organisational security measures in respect of the forms of Processing to be performed. If You wish to have Our compliance with the security measures inspected, You may submit a request to that effect to Us. We Jointly will make arrangements in that respect. You will be responsible for the costs of any such inspection. You will provide Us with a copy of the inspection report.

5. Data Leaks

- 5.1. We will notify You of any Data Leaks. We will strive to do so within 48 hours of Our discovery of any such Data Leak, or as soon as possible after We have been notified thereof by Our Sub-Processors. Further arrangements as to the relevant procedure are set forth in Article 11 of this Agreement. We will thereby provide You with such information as You will reasonably require - if necessary - to submit a correct and complete notification to the Data Protection Authority and possibly one or more Data Subjects for purposes of the Data Leaks Notification Duty, or We will forward the notification from Our Sub-Processor to You. We will also keep You informed of any measures implemented in response to the Data Leak by Us or by Our Sub-Processor.
- 5.2. You will at all times be solely responsible for notifying the Data Protection Authority and possibly one or more Data Subjects of any Data Leaks.
- 5.3. You will at all times be solely responsible for keeping a record of any Data Leaks.

6. Confidentiality obligation

- 6.1. We will keep the Personal Data received from You confidential and will impose a confidentiality obligation on Our Employee and any Sub-Processors as well. Auditors observe confidentiality in respect of the Personal Data entrusted to them in accordance with the duty imposed on auditors pursuant to the professional rules and rules of conduct. A summary of those professional rules and rules of conduct can be found on the website of the Royal Netherlands Institute of Chartered Accountants (www.nba.nl).

7. Liability

- 7.1. You warrant that the Processing of Personal Data pursuant to this Agreement is not unlawful and does not infringe any rights of Data Subjects.
- 7.2. We will not be liable for any damage arising as a result of Your failure to comply with the GDPR or any other laws or regulations. You will also indemnify Us against Third-Party claims based on any such damage. The indemnity will apply not only to any damage suffered by Third Parties (both material and non-material), but also to the costs incurred by Us in that regard, for example in any legal proceedings, and the costs of any fines imposed on Us as a result of Your actions.
- 7.3. The limitation of Our liability as agreed in the Underlying Assignment and the associated general terms and conditions will apply to the obligations as set forth in this Agreement, provided that any claims for damages pursuant to this Agreement and/or the Underlying Assignment will under no circumstances cause the limitation to be exceeded.

8. Assignability of the Agreement

- 8.1. Unless We Jointly agree otherwise in writing, neither You nor We will be permitted to assign this Agreement and the rights and obligations relating to this Agreement to any other party.

9. Termination and return/destruction of Personal Data

- 9.1. Upon termination of the Underlying Assignment, We will return the Personal Data provided to Us by You or - if You so request - destroy same. We will retain a copy of the Personal Data only if required to do so pursuant to laws or (professional) regulations.
- 9.2. You will be responsible for the costs of collecting and transferring Personal Data upon termination of the Underlying Assignment. The same applies to the costs of destruction of Personal Data. If You so request, We will provide You with a cost estimate in advance.

10. Additions and amendments to the Agreement

- 10.1. Any additions and amendments to this Agreement will be valid only if made in writing. "In writing" or "written" will also be deemed to include any amendments communicated by e-mail, followed by e-mail approval from the other party.
- 10.2. Any changes to the processed Personal Data or amendments to the reliability requirements, the privacy regulations or Your requirements may give rise to additions or amendments to this Agreement. If this leads to significant adjustments to the Underlying Assignment, or if We cannot provide an appropriate level of protection, this may constitute cause for Us to terminate the Underlying Assignment.

11. Final provisions

- 11.1. At Your request, We will promptly make available all such information as may be necessary to demonstrate compliance with the obligations laid down in this Agreement. We will facilitate, and contribute to, audits, including inspections, by You or by an inspector authorised by You. You will be responsible for the costs of any such audits or inspections. You will also be responsible for the costs of any audits of Our Sub-Processors.
- 11.2. If so requested, the Parties will work with the supervisory authority to assist in the performance of the latter's duties.
- 11.3. This Agreement will be governed by the laws of the Netherlands, and the court in the Netherlands will have jurisdiction to hear any disputes that may arise as a result of or in connection with this Agreement.
- 11.4. This Agreement will prevail over any other agreements entered into by Us with You. The applicability of any general terms and conditions that You may use to this Agreement is excluded. The provisions of this Agreement will prevail over the provisions of the Our general terms and conditions, unless explicit reference is made to a provision in those general terms and conditions.

- 11.5. If any provisions of this Agreement are found to be invalid, the validity of the other provisions of this Agreement will not be affected. In such event, We will consult with You in order to jointly draw up a new provision. This provision will approximate the spirit of the invalid provision as far as possible, but then obviously be designed in such a way that the provision is valid.
- 11.6. Any notices for purposes of this Agreement (including notices for purposes of Article 5 - Data Leaks) will be given by You and by Us to the following Employees:

Name Mr/Mrs Client
employed by: **Controller**
contact details:

Mr/Mrs Partner
employed by: **Processor**
contact details: info@swartenco.nl
tel. no.: +31(0)20-5456121

In the event of a change in the data pertaining to the aforementioned Employees, or in the event of their replacement by other Employees, We will notify each other.

Signature

Signed on date

Amstelveen, date

Klant BV

Mr/Mrs Cliënt

Swart&co

Accountants

Mr/Mrs Vennoot

Annex

Personal Data

The assignment given to process personal data will comprise*:

Processing financial accounting records

The following Personal Data will be Processed for purposes of the Underlying Assignment.

- Given name and surname
- Address details
- Telephone number
- E-mail address
- Bank account number

Processing employee salaries

The following Personal Data will be Processed for purposes of the Underlying Assignment.

- Given name and surname
- Gender
- Date of birth
- Place of birth
- Address details
- Telephone number
- E-mail address
- Bank account number
- Citizen Service Number (BSN)
- Identity document
- Job title
- Employment agreements

Arranging the corporate income tax return

The following Personal Data will be Processed for purposes of the Underlying Assignment.

- Given name and surname
- Address details
- Citizen Service Number (BSN)

Assignment for the performance of specific services

The following Personal Data will be Processed for purposes of the Underlying Assignment.

- subsequently to be agreed

* tick as applicable

Processing

We will Process Personal Data for You as follows:

Financial Accounts

The foregoing personal data will be used for the processing of financial accounting records. The **Controller** will provide the **Processor** with the required data in a jointly agreed manner. The **Processor** may engage sub-processors for the purpose of processing the **Controller's** financial accounting records. In order to comply with the obligations under this agreement and the provisions of the GDPR, the **Processor** has entered into data processing agreements with the sub-processors. Only authorised Processor employees will have access to the required software and the Controller's personal data required for the processing.

You determine what Personal Data will be processed and how; You are the Controller for this processing.

Employee salaries

The foregoing personal data will be used for the processing of employee salaries. The **Controller** will provide the **Processor** with the required data in a jointly agreed manner. The **Processor** may engage sub-processors for the purpose of processing the **Controller's** salaries. In order to comply with the obligations under this agreement and the provisions of the GDPR, the **Processor** has entered into data processing agreements with the sub-processors. Only authorised Processor employees will have access to the required software and the Controller's personal data required for the processing.

You determine what Personal Data will be processed and how; You are the Controller for this processing.

Corporate income tax return

The foregoing personal data will be used for the purpose of arranging the corporate income tax return. The **Controller** will provide the **Processor** with the required data in a jointly agreed manner. The **Processor** may engage sub-processors for the purpose of arranging the **Controller's** corporate income tax return. In order to comply with the obligations under this agreement and the provisions of the GDPR, the **Processor** has entered into data processing agreements with the sub-processors. Only authorised Processor employees will have access to the required software and the Controller's personal data required for the processing.

You determine what Personal Data will be processed and how; You are the Controller for this processing.

Performance of specific services

The foregoing personal data will be used to perform assignments for specific services. The **Controller** will provide the **Processor** with the required data in a jointly agreed manner. The **Processor** may engage sub-processors for the purpose of performing specific services for the **Controller**. In order to comply with the obligations under this agreement and the provisions of the GDPR, the **Processor** has entered into data processing agreements with the sub-processors.

Only authorised Processor employees will have access to the required software and the Controller's personal data required for the processing.

You determine what Personal Data will be processed and how; You are the Controller for this processing.

Technical and organisational measures

We will implement the following technical and organisational measures to protect the Personal Data against loss or unlawful Processing:

We will implement appropriate measures to prevent abuse, loss, unauthorised access, undesirable disclosure and unauthorised alteration of Your data, in line with the applicable legal requirements and guidelines.

For example, physical access to the office is restricted, so that physical access to the computers is restricted as well. Subsequently, a 2FA is to be used to log on; if the login fails, access to the system will be blocked. Each employee has their own user name, password and authorisations within the system on a need-to-know basis.

The double and encrypted daily back-up of Our files renders the inadvertent or unlawful destruction or loss of data highly unlikely.

We will not retain Your personal data any longer than is strictly necessary to realise the purposes for which Your data are collected or as required by the Dutch Public Records Act [*Archiefwet*]. This means that Our minimum retention period is 10 years or the maximum retention period.

Third Parties

We engage these following third parties (Sub-Processors) in the performance of the various assignments:

Visma
Unit-4
Nextens
CreAim

Processing outside the European Economic Area

No processing will take place outside the European Economic Area.