**Model transfer agreement: Customer (Controller) - Accountant (Controller)**

*Explanation: As the accountant, you are in principle the Controller if you process personal data within the scope of an assignment to which Standards 100-3850 or 4410 apply. However, you should always establish whether special circumstances make you the Processor in a specific case. The NBA website contains an up-to-date overview where you can find out whether the accountant is a Controller or a Processor for a particular type of assignment. (*[*https://www.nba.nl/tools-en-voorbeelden/model-bewerkersovereenkomst/*](https://www.nba.nl/tools-en-voorbeelden/model-bewerkersovereenkomst/) *)*

*Before using this model, you should establish whether you, as the accountant, are Processor or Controller. You can only use this model for assignments where both you, as the accountant, and the client are Controllers.*

*It has become clear that within society the use of a model is sometimes regarded as compulsory. However, this is* ***not*** *the case. You may choose to use the models drawn up by the NBA, but, obviously, you may also choose to draw up your own agreement or adapt this model according to your own preferences. In addition, an agreement between two Controllers is not mandatory under the GDPR.*

**The Parties:**

[NAME CUSTOMER + LEGAL FORM], with its registered office in [city, street and house number if any], hereinafter referred to as: “**Client**”, “**You**” or “**Your**”, duly represented in this matter by [name], in the capacity of [position];

and

[NAME ACCOUNTANCY PRACTICE], with its registered office in [city, street and house number], hereinafter referred to as: “**Contractor/Controller**”, “**We**”, "**Us** or “**Our**”, duly represented in this matter by [name + position];

Hereinafter jointly referred to as "Parties", "We" or "Jointly"

**Whereas:**

A. On [date] We entered into the assignment with name/reference [complete] with You, for Us to perform the following assignment: [complete] (the “Underlying Assignment”). We will Process the Personal Data listed in the Annex to this Agreement.

B. We shall be regarded as "Controller" because of the performance of this Underlying assignment and in respect of the Personal Data that We will Process in this respect. As Client you are also regarded as “Controller”[[1]](#footnote-1). In this Agreement, We record our mutual rights and obligations in respect of the processing of Personal Data.

**The Parties have agreed as follows:**

**1.** **Definitions**

A number of terms is used in this Agreement. The meaning of these terms is explained below. The terms referred to above shall be capitalised in this Agreement. In the list below, the description of the term from the privacy legislation and regulations is mostly used.

|  |  |
| --- | --- |
| Data Subject: | The person to whom Personal Data relates. |
| Processor: | A natural or legal person, public authority, agency or other body that processes personal data on behalf of the Controller, without being subject to its direct authority. |
| 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. |
| Personal Data Breach: | A breach of the security leading to - or where it cannot reasonably be ruled out that it will lead 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 We and Our Employees.  |
| Data Breach Notification Duty: | The duty to report Data Breaches to the Dutch Data Protection Authority and (in some cases) to the Data Subject(s).  |
| Employees | Persons working for You or Us, either in employment or hired on a temporary basis. |
| Underlying Assignment: | The assignment as referred to in the recitals under A. |
| Agreement: | This Controller – Controller agreement. |
| Personal Data:  | Any information relating to an identified or identifiable natural person ("the Data Subject") processed within the scope of the "Underlying Assignment"; an identifiable natural person is considered to be any natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location details, an online identifier or to one or more elements specific to that natural person's physical, physiological, genetic, mental, psychological, economic, cultural or social identity.  |
| Processing / Processing Operation: | A processing operation or set of processing operations with respect to personal data or sets of personal data, carried out by means of automated processes or otherwise, such as collection, recording, organisation, storage, updating or modification, retrieval, consultation, use, dissemination by means of transmission, distribution or making available in any other form, aligning or combining, blocking, erasure or destruction. |
| GDPR | General Data Protection Regulation, including the implementation act of this regulation. The GDPR has replaced the Personal Data Protection Act with effect from 25 May 2018. |

**2. Applicability and duration**

2.1 This Agreement shall apply to any Processing Operation carried out by Us as the Contractor/Controller on the basis of the Underlying Assignment and any personal data breaches that occur in relation to those data.

2.2 This Agreement shall enter into force on the date on which the Underlying Assignment takes effect and shall end on the date on which We no longer possess any Personal Data within the scope of the Underlying Assignment. It is not possible to terminate this Agreement prematurely. We may have a long or longer retention period on the basis of legislation and regulations.

2.3 Article 6 of this Agreement shall continue to apply even after the Agreement (or the Underlying Assignment) has been terminated.

**3. Rights of Data Subjects**

3.1 If We receive requests (directly) from the Data Subject(s) to exercise their rights (for example, access to, modification or deletion of Personal Data), We may forward these requests to You for further handling. Due to the nature of the Underlying Assignment and the contextual processing responsibility that rests with Us, it is not always appropriate for us to handle (directly) requests from the Data Subject(s) to exercise their rights. In such cases We shall forward these requests to You. You shall handle these requests, whereby We can be of assistance to you if We have access to this Personal Data within the scope of the Underlying Assignment.

**4. Security measures**

4.1 For the transfer of Personal Data between the Parties, We have agreed on the security measures set out in the Annex to this Agreement. In implementing the security measures, account has been taken of the risks to be mitigated, the state of the art, and the costs of the security measures.

**5. Data Breaches**

5.1 In the event of a Data Breach involving data processed within the scope of this assignment, We shall inform You accordingly.

5.2 In the event of a Data Breach, We shall, as the Controller, report this independently to the Data Protection Authority, if necessary. Due to the nature of the Underlying Assignment and the contextual processing responsibility that rests with Us, it is not always logical for Us to inform the Data Subjects directly - if necessary - about a Data Breach. Where appropriate, We shall jointly determine which Party, from the perspective of the Data Subjects, is the most logical one to report the Data Breach to the Data Subjects.

**6. Liability**

6.1 You guarantee that the Processing of Personal Data on the basis of this Agreement is not unlawful and does not infringe on the rights of the Data Subject(s).

6.2 We shall not be liable for any damage suffered as a result of Your failure to comply with the GDPR or other laws or regulations. You shall also indemnify Us against claims by third parties on the basis of such damage. Indemnification shall apply not only to the damage that Third Parties may have suffered (both material and immaterial), but also to the costs We must incur in connection therewith, for example in any legal proceedings, and to the costs of any fines imposed on Us as a result of Your acts.

6.3 The limitation of Our liability agreed in the Underlying Assignment and associated General Terms and Conditions shall apply to the obligations set out in this Agreement, on the understanding that one or more claims for compensation under this Agreement and/or the Underlying Assignment shall never result in the limitation being exceeded.

**7. Final provisions**

7.1 Unless We have jointly agreed otherwise in writing, You and We shall not be permitted to transfer this Agreement and the rights and obligations under this Agreement to another party.

7.2 Additions and amendments to this Agreement shall be valid only if made in writing. The term "in writing" shall also include amendments communicated by email, followed by agreement by email from the other party.

7.3 If requested, the Parties shall cooperate with the supervisory authority in the performance of its duties.

7.4 This Agreement shall be governed by the laws of the Netherlands and shall be subject to the jurisdiction of the courts of the Netherlands in all disputes ensuing from or relating to this Agreement.

7.5 This Agreement shall have primacy over any other agreements concluded by Us with You. If You apply General Terms and Conditions, these shall not apply to this Agreement. The provisions of this Agreement shall prevail over the provisions of Our General Terms and Conditions, unless explicit reference is made to a provision in the General Terms and Conditions.

7.6 If any provision of this Agreement is found to be invalid, the validity of the other provisions of this Agreement shall not be affected. We shall then enter into consultations with You to jointly draw up a new provision. This provision shall be in the spirit of the invalid provision where possible, but obviously drafted in such a manner that the provision is valid.

7.7 Communications under this Agreement (including communications within the context of Article 5 - Data Breaches) shall be made by You and Us to the Employees listed below:

 [name]

 [employed at: ]

 [contact details]

[name]

 [employed at: ]

 [contact details]

If the details of the aforementioned Employees change, or if they are replaced by other Employees, We shall inform each other thereof.

**Signature**

Signed on [date]

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| [name customer + name signatory] | [name accountancy practice + name signatory] |

**Annex:**

**Personal Data**

[*Describe the subject matter, duration, nature, and purpose of the processing, to be completed by the customer on the basis of the Underlying Assignment*]

The following Personal Data will be processed in the context of the Underlying Assignment:

[*List of types of Personal Data and categories of Data Subjects, to be completed by the customer*]

**Processing Operations**

We Process Personal Data for You in the following ways:

[*Description of the service(s) provided by the accountant and the personal data processed by the accountant.*]

**Technical and organisational measures**

We shall implement the following technical and organisational measures to protect the Personal Data against loss or unlawful Processing during the transfer between the Parties:

[*list of measures to be implemented to ensure an adequate level of security of the transfer of personal data, to be completed by the accountant.*]

1. This does not relate to the joint processing responsibility within the meaning of Article 26 of the GDPR. [↑](#footnote-ref-1)