

(Date: May 2018)

Contents

Article 1 Definitions	2
Article 2 Object of this Data Processing Agreement.....	3
Article 3 Entry into force and duration.....	3
Article 4 Scope of the Other Party's Processing competence.....	3
Article 5 Security measures	4
Article 6 Duty of confidentiality – the Other Party's Staff	4
Article 7 Subprocessor	4
Article 8 Assistance concerning rights of Data Subjects	4
Article 9 Personal Data Breach	4
Article 10 Return or erasure of Personal Data	5
Article 11 Obligation to supply information and audit obligation	5
Schedule 1 Processing Personal Data	6
Schedule 2 Appropriate technical and organisational measures	7
Schedule 3 Agreements regarding Personal Data Breaches.....	8

Data Processing Agreement (ARBIT 2018)

Contract number: [...].

The undersigned:

1. The Dutch Authority for the Financial Markets, which has its registered office in Amsterdam, legally represented in this matter by
..... (and)
[signatory's name and position],
hereafter referred to as 'the Contracting Authority',

and

2. [full name and legal form of the Contractual Partner],
which has its registered office in [place],
legally represented in this matter by
..... (and) [signatory's name],
hereafter referred to as 'the Other Party',

jointly referred to as 'the Parties';

WHEREAS:

- Insofar as the Other Party processes Personal Data for the Contracting Authority in the context of the Contract, the Contracting Authority, under article 4 (7) and (8) of the Regulation, qualifies as a controller for the Processing of Personal Data and the Other Party as a processor;
- The Parties to this Data Processing Agreement, as referred to in article 28, paragraph 3 of the Regulation, wish to record their agreements on the Processing of Personal Data by the Other Party.

AGREE AS FOLLOWS:

Article 1 Definitions

Certain terms in this Data Processing Agreement are written with initial capitals. These terms are defined in article 1 of the General Government Terms and Conditions for IT Contracts 2018 (ARBIT 2018). In derogation therefrom or in addition thereto, the following terms are defined below for the purposes of this Data Processing Agreement:

- 1.1 Data Subject: the person whom the Personal Data concerns.
- 1.2 Personal Data Breach: a breach in security that leads to the accidental or unlawful destruction, loss, change or unauthorised provision of, or unauthorised access to, data that has been transferred, stored or processed in any other way.
- 1.3 Contract: the Contract between the Contracting Authority and the Other Party [name] dated [date], reference number [number].
- 1.4 Personal Data: any data concerning an identified or identifiable natural person that is processed by the Other Party for the Contracting Authority in the context of the Contract.

- 1.5 Regulation: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.6 Data Processing Agreement: this agreement including its recitals and the accompanying schedules.
- 1.7 Processing: any operation or any set of operations concerning Personal Data or any set of Personal Data, carried out in the context of the Contract via automated or manual procedures, including in any case the collection, recording, organisation, structuring, storage, updating or modification, retrieval, consultation, use, disclosure by means of transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data.

Article 2 Object of this Data Processing Agreement

- 2.1 This Data Processing Agreement governs the Processing of Personal Data by the Other Party in the context of the Contract.
- 2.2 The nature and purpose of the Processing, the type of Personal Data and the categories of Personal Data, Data Subjects and recipients are set out in Schedule 1.
- 2.3 The Other Party guarantees that the appropriate technical and organisational measures will be taken, in order to ensure that Processing complies with the requirements of the Regulation and that the rights of the Data Subject(s) are protected.
- 2.4 The Other Party guarantees compliance with the requirements of the applicable legislation relating to the Processing of Personal Data.

Article 3 Entry into force and duration

- 3.1 This Data Processing Agreement enters into force as soon as it has been signed by both Parties.
- 3.2 This Data Processing Agreement terminates after and insofar as the Other Party has deleted or returned all Personal Data in accordance with article 10.
- 3.3 Neither of the Parties may terminate this Data Processing Agreement before the Contract terminates.

Article 4 Scope of the Other Party's Processing competence

- 4.1 The Other Party will Process the Personal Data exclusively for and on the basis of written instructions from the Contracting Authority barring statutory rules to the contrary that apply to the Other Party.
- 4.2 If any instruction as referred to in paragraph 1 is deemed by the Other Party to contravene a statutory rule on data protection, the Other Party will notify the Contracting Authority of this prior to Processing, unless a statutory rule prohibits such notification.
- 4.3 If the Other Party is obliged to disclose Personal Data on the basis of a statutory rule, it will inform the Contracting Authority immediately, if possible prior to the disclosure.

- 4.4 The Other Party will have no control over the purpose or means of the Personal Data Processing.

Article 5 Security measures

- 5.1 In addition to article 19 of the ARBIT 2018, and without prejudice to article 2.3 of this Data Processing Agreement, the Other Party will implement the technical and organisational security measures described in Schedule 2.
- 5.2 The Parties recognise that guaranteeing an appropriate level of security may require additional security measures to be implemented on an ongoing basis. The Other Party guarantees an appropriate level of security having regard to the risks entailed.
- 5.3 At the express written request of the Contracting Authority, the Other Party will adopt additional measures to ensure the security of the Personal Data.
- 5.4 The Other Party will not process any Personal Data outside a European Union member state, unless it has obtained express written approval to do so from the Contracting Authority and barring statutory obligations to the contrary.
- 5.5 If the Other Party discovers any illegal or unauthorised Processing or infringements of the security measures referred to paragraphs 1 and 2, it will inform the Contracting Authority without unreasonable delay.
- 5.6 The Other Party will assist the Contracting Authority in ensuring compliance with the obligations under articles 32 to 36 inclusive of the Regulation.

Article 6 Duty of confidentiality – the Other Party’s Staff

- 6.1 The Personal Data is confidential as referred to in article 17.1 of the ARBIT 2018.
- 6.2 At the request of the Contracting Authority, the Other Party will show that its Staff have undertaken to observe the duty of confidentiality referred to in article 17.2 of the ARBIT 2018.

Article 7 Subprocessor

If the Other Party, with due regard for the provisions of article 23 of the ARBIT 2018, engages another processor to carry out Processing activities for the Contracting Authority, the other processor must be bound by an agreement imposing the same data protection obligations as those imposed by this Data Processing Agreement.

Article 8 Assistance concerning rights of Data Subjects

The Other Party will assist the Contracting Authority in fulfilling its obligation to respond to requests from Data Subjects to exercise the rights set out in chapter III of the Regulation.

Article 9 Personal Data Breach

- 9.1 The Other Party will inform the Contracting Authority, without unreasonable delay, as soon as it becomes aware of any Personal Data Breach, in accordance with the agreements set out in Schedule 3.

- 9.2 After reporting an incident as described in the first paragraph, the Other Party will also inform the Contracting Authority of developments relating to the Personal Data Breach.
- 9.3 Each of the Parties will bear any costs they incur in connection with reporting incidents to the competent supervisory authority and the Data Subject.

Article 10 Return or erasure of Personal Data

- 10.1 Once the Contract expires, the Other Party will erase the Personal Data or return it to the Contracting Authority, whichever the Contracting Authority prefers. The Other Party will delete any copies, barring statutory rules to the contrary.

Article 11 Obligation to supply information and audit obligation

- 11.1 The Other Party will provide all necessary information to show that the obligations set out in this Data Processing Agreement have been and will be fulfilled.
- 11.2 The Other Party will provide all necessary cooperation with respect to audits.

Done on the later of the two dates stated below and signed in duplicate.

Amsterdam, [date]

[place], [date]

For the Dutch Authority for the Financial Markets

For [Other Party]

[signatory's name]
[signatory's position]

[signatory's name]
[signatory's position]

Schedule 1 Processing Personal Data

This Schedule must in any case specify:

The nature and purpose of the Processing activities	
The type of Personal Data	
The categories of Personal Data	
The categories of Data Subjects	
The categories of Personal Data recipients	

The information in the controller's records, obligatory under article 30 of the Regulation, can be used to complete this schedule.

Schedule 2 Appropriate technical and organisational measures

The standards and measures that the Other Party must adopt to ensure the security of Processing must be specified in this schedule. Reference may be made to documents setting out standards and measures, such as the programme of requirements or request for tenders.

Schedule 3 Agreements regarding Personal Data Breaches

The agreements on how the Other Party will inform the Contracting Authority of Personal Data Breaches must be specified in this schedule.

Stichting Autoriteit Financiële Markten procedure

The Other Party shall without undue delay and in any case within 24 hours after it or one of its Subprocessors becomes aware of a Personal Data Breach notify such Personal Data Breach to the Contracting Authority. Such notification shall be sent to the following email address: helpdesk@afm.nl and copied to security.office@afm.nl and privacy@afm.nl. It shall include all necessary information for the Contracting Authority in order to enable it to fulfil its obligations pursuant to article 33 and 34 of the Regulation. In addition, the Other Party shall take all necessary measures to undo Personal Data Breach or limit its impact.

The Other Party will keep detailed records of all Personal Data Breaches, regardless of whether those breaches need to be notified or not within the meaning of article 33, first paragraph, of the Regulation. The Other Party will immediately and fully register at least the information mentioned below in its records. The Other Party will provide access to the aforementioned records within 24 hours of the Contracting Party's request to do so, or on its own initiative.

The Other Party will not provide information concerning such Personal Data Breach to any other party than the Contracting Authority without the prior written consent of the Contracting Authority.

Minimum information that the Other Party must supply

Nature of the Personal Data Breach
The Personal Data and Data Subject(s)
Probable consequences of the Personal Data Breach
Measures proposed or taken by the Other Party to tackle the Personal Data Breach including, where relevant, measures to limit the possible negative consequences of the incident.